15-67

I. L. DE LOLME.

Publish'd as the Act directs July 6.th 1784, by G. Robinson & J. Murray.

Serfojee Rajah. 1829

1567

THE

CONSTITUTION

OF

ENGLAND;

OR,

AN ACCOUNT

OF THE

ENGLISH GOVERNMENT:

IN WHICH IT IS COMPARED, BOTH WITH THE REPUBLICAN FORM OF GOVERNMENT, AND THE OTHER MONARCHIES IN EUROPE.

BY J. L. DE LOLME, ADVOCATE,

MEMBER OF THE COUNCIL OF THE TWO HUNDRED IN THE REPUBLIC OF GENEVA.

A NEW EDITION, CORRECTED.

Ponderibus librata suis.——

OVID. Met. L. I. 13.

MAHARAJA SERFOGI'S SARASVATI MAHAL

LONDON:

PRINTED FOR

G. G. J. AND J. ROBINSON, PATERNOSTER-ROW; AND J. MURRAY, FLEET-STREET.

M.DCC.XC.

...DORE MA... ...SARASWATI MAHAL...

TO THE

K I N G.

SIRE,

THE approbation with which the Public have been pleafed to favour this Work, together with the nature of the fubject, embolden me to lay the prefent fourth* and enlarged Edition of the fame at your Majefty's feet, both as an homage, and an expreffion of the defire I entertain, the book may for a few minutes engage the attention of a perfon of your deep and extenfive knowledge.

Your Majefty's reign has, for many years paft, afforded proofs in more refpects than one, that, though human wifdom may not always be able to anticipate difficulties, yet, affifted by fortitude, it can fucceed in terminating

* This Dedication was firft prefixed to the fourth Edition.

them in a more favourable manner than it ſeemed at firſt poſſible to be expected, or even in bringing them to an happy iſſue. According to the common courſe of Nature, your Majeſty has only yet ſeen the leſs conſiderable part of the years of which your reign is to be compoſed: that the part which now opens before your Majeſty, may be attended with a degree of ſatisfaction proportionate to your Majeſty's public and private virtues, to your diſintereſted government, and religious regard for your royal engagements, is the fond hope of

Your Majeſty's
Moſt humble and
Moſt devoted Servant,
And theſe many Years
Subject by Choice,

May, 1784.

J. L. DE LOLME.

CONTENTS.

BOOK I.

PAGE

INTRODUCTION — — — 1

CHAP. I. *Causes of the Liberty of the English Nation.—Reasons of the Difference between the Government of France, and that of England. In England the great Power of the Crown, especially under the first Norman Kings, created an Union between the Nobility and the People* — — — — 6

CHAP. II. *A second Advantage England had over France:—it formed one undivided State* — 24

CHAP. III. *The Subject continued* — 41

CHAP. IV. *Of the Legislative Power* — 60

CHAP. V. *Of the Executive Power* — 71

CHAP. VI. *The Boundaries which the Constitution has set to the Royal Prerogative* — 74

CHAP. VII. *The same Subject continued* 78

CHAP. VIII. *New Restrictions* — 84

CHAP. IX. *Of Private Liberty, or the Liberty of Individuals* — — 100

CHAP. X. *On the Law in regard to Civil Matters that is observed in England* — 113

CHAP. XI. *The Subject continued. The Courts of Equity* — — 136

CHAP. XII. *Of Criminal Justice* — 154

CHAP. XIII. *The Subject continued* — 169

CHAP. XIV. *The Subject concluded—Laws relative to Imprisonments* — 188

C O N T E N T S.

B O O K II.

CHAP. I. *Some Advantages peculiar to the English Constitution.* 1. *The Unity of the Executive Power* — — 195

CHAP. II. *The Subject concluded.—The Executive Power is more easily confined when it is* ONE — 215

CHAP. III. *A second Peculiarity—The Division of the Legislative Power* — — 218

CHAP. IV. *A third Advantage peculiar to the English Government—The Business of proposing Laws, lodged in the Hands of the People* — — 229

CHAP. V. *In which an Inquiry is made, whether it would be an Advantage to public Liberty that the Laws should be enacted by the Votes of the People at large* — — — 240

CHAP. VI. *Advantages that accrue to the People from appointing Representatives* — — 256

CHAP. VII. *The Subject continued.—The Advantages that accrue to the People from their appointing Representatives, are very inconsiderable, unless they also entirely trust their Legislative Authority to them* — 260

CHAP. VIII. *The Subject concluded.—Effects that have resulted in the English Government, from the People's Power being completely delegated to their Representatives* — — — 266

CONTENTS.

CHAP. IX. *A farther Disadvantage of Republican Governments—The People are necessarily betrayed by those in whom they trust* —— —— 271

CHAP. X. *Fundamental Difference between the English Government and the Governments just described.—In England all Executive Authority is placed out of the Hands of those in whom the People trust.—Usefulness of the Power of the Crown* — — 280

CHAP. XI. *The Powers which the People themselves exercise.—The Election of Members of Parliament* 288

CHAP. XII. *The Subject continued.—Liberty of the Press* —— —— 291

CHAP. XIII. *The Subject continued* — 305

CHAP. XIV. *Right of Resistance* — 314

CHAP. XV. *Proofs drawn from Facts of the Truth of the Principles laid down in this Work.—1. The peculiar Manner in which Revolutions have always been concluded in England* — — 324

CHAP. XVI. *Second Difference.—The Manner after which the Laws for the Liberty of the Subject are executed in England* —— 343

CHAP. XVII. *A more inward View of the English Government than has hitherto been offered to the Reader in the course of this Work.—Very essential Differences between the English Monarchy, as a Monarchy, and all those with which we are acquainted* —— 387

CHAP. XVIII. *How far the Examples of Nations that have lost their Liberty, are applicable to England* 472

CONTENTS.

CHAP. XIX. *A few Thoughts on the Attempts that may at particular Times be made to abridge the Power of the Crown, and on some of the Dangers by which such Attempts may be attended* — — 498

CHAP. XX. *A few additional Thoughts on the Right of Taxation, lodged in the Hands of the Representatives of the People.—What Kind of Danger this Right may be exposed to* — — — 513

CHAP. XXI. *Conclusion.—A few Words on the Nature of the Divisions that take place in England* — 528

THE TANJORE MAHARAJA SERFOGI'S SARASWATI MAHAL LIBRARY

ADVERTISEMENT.

THE Book on the Engliſh Conſtitution, of which a new Edition is here offered to the Public, was firſt written in French, and publiſhed in Holland. Several perſons have aſked me the queſtion, How I came to think of treating ſuch a ſubject? One of the firſt things in this Country, that engages the attention of a ſtranger who is in the habit of obſerving the objects before him, is the peculiarity of its Government: I had moreover been lately a witneſs of the broils which had for ſome time prevailed in the Republic in which I was born, and of the revolution by which they were terminated. Scenes of that kind in a State which, though ſmall, is independent, and contains within itſelf the principles of its motions, had naturally given me ſome competent inſight into the firſt real principles of Governments: owing to this circumſtance, and per-

haps alſo to ſome moderate ſhare of natural abilities, I was enabled to perform the taſk I had undertaken, with tolerable ſucceſs. I was twenty-ſeven years old when I firſt came to this Country: after having been in it only a year, I began to write my work, which I publiſhed about nine months afterwards: and have ſince been ſurpriſed to find that I had committed ſo few errors of a certain kind: I certainly was fortunate in avoiding to enter deeply into thoſe articles with which I was not ſufficiently acquainted.

The Book met with rather a favourable reception on the Continent; ſeveral ſucceſſive Editions having been made of it. And it alſo met here with approbation, even from Men of oppoſite parties; which in this Country was no ſmall luck for a Book on ſyſtematical politics. Allowing that there was ſome connection and clearneſs, as well as novelty, in the arguments, I think the work was of ſome peculiar utility, if the epoch at which it was publiſhed is conſidered; which was, though without any deſign from me, at the time when the diſputes with the Colonies were beginning to take a ſerious turn, both here and in America. A work which contained a ſpecious, if not thoroughly true, confutation of thoſe political notions by the help of which a diſunion of the Empire was endeavoured to be promoted (which confutation was moreover noticed by Men in the higheſt places), ſhould have procured to the Author ſome ſort of real encou-

ragement; at leaſt the publication of it ſhould not have drawn him into any inconvenient ſituation. When my enlarged Engliſh Edition was ready for the preſs, had I acquainted miniſters that I was preparing to boil my tea-kettle with it, for want of being able conveniently to afford the expence of printing it, I do not pretend to ſay what their anſwer would have been; but I am firmly of opinion, that, had the like arguments in favour of the exiſting Government of this Country, againſt republican principles, been ſhewn to Charles the Firſt, or his Miniſters, at a certain period of his reign, they would have very willingly defrayed the expences of the publication.—— In defect of encouragement from Great Men (and even from Bookſellers) I had reſourſe to a ſubſcription; and my having expected any ſucceſs from ſuch a plan, ſhews that my knowledge of this Country was at that time but very incomplete (*a*).

(*a*) In regard to two Subſcribers in particular, I was, I confeſs, ſadly diſappointed.— Though all the Bookſellers in London had at firſt refuſed to have any thing to do with my Engliſh Edition (notwithſtanding the French work was extremely well known), yet, ſoon after I had thought of the expedient of a Subſcription, I found that two of them, who are both living, had began a tranſlation, on the recommendation, as they told me, of a noble Lord, whom they named, who had, till a few years before, filled one of the higheſt offices under the Crown. I paid them ten pounds, in order to engage them to drop their undertaking, about which I underſtood they already had been at ſome expence. Had the Noble Lord in queſtion favoured me with his ſubſcription, I would have celebrated the generoſity and munificence of my Patron; but as he did not think proper ſo to do, I

After mentioning the advantages with which my Work has not been favoured, it is however juſt I ſhould give an account of thoſe by which it has been attended. In the firſt place, as is above

ſhall only obſerve that his recommending my work to a Bookſeller, coſt me ten pounds.

At the time the above ſubſcription for my Engliſh Edition was advertiſing, a copy of the French work was aſked of me for a Noble Earl, then inveſted with a high office in the State; none being at that time to be found at any Bookſeller's in London. I gave the only copy I had (the conſequence was, that I was obliged to borrow one, to make my Engliſh edition from); and I added, that I hoped his Lordſhip would honour me with his ſubſcription. However, my hopes were here again confounded. As a gentleman, who continues to fill an important office under the Crown, accidentally informed me about a year afterwards, that the Noble Lord here alluded to, had lent him my French work, I had no doubt left that the copy I had delivered had reached his Lordſhip's hand; I therefore preſumed to remind him by a letter, that the Book in queſtion had never been paid for; at the ſame time apologizing for ſuch liberty from the circumſtances in which my late Engliſh Edition had been publiſhed, which did not allow me to oſe one copy. I muſt do his Lordſhip (who is moreover a Knight of the Garter) the juſtice to acknowledge, no later than a week afterwards, he ſent two half crowns for me to a Bookſeller's in Fleet-ſtreet. A Lady brought them in a coach, who took a receipt. As ſhe was, by the Bookſeller's account, a fine Lady, though not a Peereſs, it gave me much concern that I was not preſent to deliver the receipt to her myſelf.

At the ſame time I mention the noble Earl's great punctuality, I think I may be allowed to ſay a word of my own merits. I waited, before I preſumed to trouble his Lordſhip, till I was in-

ſaid, Men of high rank have condeſended to give their approbation to it; and I take this opportunity of returning them my moſt humble acknowledgments. In the ſecond place, after the difficulties by which the publication of the Book had been attended and *followed*, were overcome, I began to ſhare with Bookſellers in the profits ariſing from the ſale of it. Theſe profits I indeed thought to be but ſcanty and ſlow: but then I conſidered this was no more than the common complaint made by every Trader in regard to his gain, as well as by every Great Man in regard to his emoluments and his penſions. After a courſe of ſome years, the net balance formed by the profits in queſtion amounted to a certain ſum, proportioned to the bigneſs of the performance. And, in fine, I muſt add to the account of the many favours I have received, that I was allowed to carry on the above buſineſs of ſelling my book, without any objection being formed againſt me from my not having ſerved a regular apprenticeſhip, and without being moleſted by the Inquiſition.——Several Authors have choſen to relate, in Writings publiſhed after death, the perſonal advantages by which their performances had been followed: as for me, I have thought otherwiſe; and, fearing that during the latter part of my life I may be otherwiſe engaged, I have preferred to write now the account of

formed, that a penſion of four thouſand pounds was ſettled upon him (I could have wiſhed much my own Creditors had, about that time, ſhewn the like tenderneſs to me), and I moreover gave him time to receive the firſt quarter.

my ſucceſſes in this Country, and to ſee it printed while I am yet living.

I ſhall add to the above narrative (whatever the Reader may be pleaſed to think of it) a few obſervations of rather a more ſerious kind, for the ſake of thoſe perſons who, judging themſelves to be poſſeſſed of abilities, find they are neglected by thoſe having it in their power to do them occaſional ſervices, and ſuffer themſelves to be mortified by it. To hope that men will in earneſt aſſiſt in ſetting forth the mental qualifications of others, is an expectation which, generally ſpeaking, muſt needs be diſappointed. To procure one's notions and opinions to be attended to, and approved, by the circle of one's acquaintance, is the univerſal wiſh of Mankind. To diffuſe theſe notions farther, to numerous Parts of the Public, by means of the preſs or by others, becomes an object of real ambition: nor is this ambition always proportioned to the real abilities of thoſe who feel it; very far from it. When the approbation of Mankind is in queſtion, all perſons, whatever their different ranks may be, conſider themſelves as being engaged in the ſame career: they look upon themſelves as being candidates for the very ſame kind of advantage: high and low, all are in that reſpect in a ſtate of primæval equality; nor are thoſe who are likely to obtain ſome prize, to expect much favour from the others.

This deſire of having their ideas communicated to, and approved by, the Public, was very preva-

lent among the Great Men of the Roman Commonwealth, and afterwards with the Roman Emperors; however imperfect the means of obtaining these ends might be in those days, compared with those which are used in ours. The same desire has been equally remarkable among modern European kings, not to speak of other parts of the World; and a long catalogue of Royal Authors may be produced. Ministers, especially after having lost their places, have shewn no less inclination than their Masters, to convince Mankind of the reality of their knowledge. Noble Persons of all denominations have increased the catalogue. And, to speak of the Country in which we are, there is it seems no good reason to make any exception in regard to it; and Great Men in it, or in general those who are at the head of the People, are we find sufficiently anxious about the success of their Speeches, or of the printed performances which they sometimes condescend to lay before the Public; nor has it been every Great Man wishing that a compliment may be paid to his personal knowledge, that has ventured to give such lasting specimens.

Several additions were made to this Work, at the time I gave the first English Edition of it. Besides a more accurate division of the Chapters, several new notes and paragraphs were inserted in it; for instance, in the 11th Chapter of the 2d Book; and three new chapters, the 15th, 16th, and 17th, amounting to about ninety pages, were added to

the ſame Book. Theſe three additional chapters, never having been written by me in French, have been inſerted in the third Edition made at Amſterdam, tranſlated by a perſon whom the Dutch Bookſeller employed for that purpoſe: as I never had an opportunity to peruſe a copy of that Edition, I cannot ſay how well the Tranſlator has performed his taſk. Having now parted with the copy-right of the Book, I have farther added four new Chapters to it (10, 11, B. I. 19, 20, B. II.) by way of taking a final leave of it; and in order the more completely to effect this, I may perhaps give, in a few months, a French Edition of the ſame (which I cannot tell why I have not done ſooner), in which all the above-mentioned additions, tranſlated by myſelf, ſhall be inſerted.

In one of the former additional Chapters (the 17th, B. II.) mention is made of a peculiar circumſtance attending the Engliſh Government, conſidered as a Monarchy, which is the ſolidity of the power of the Crown. As one proof of this peculiar ſolidity, it is remarked, in that Chapter, that all the Monarchs who ever exiſted, in any part of the world, were never able to maintain their ground againſt certain powerful ſubjects (or a combination of them), without the aſſiſtance of regular forces at their conſtant command; whereas it is evident that the power of the Crown, in England, is not at this day ſupported by ſuch means; nor even had the Engliſh Kings a guard of more than a few ſcores of Men, when their power, and the exertions they at times made of it, were equal to what has ever been related of the moſt abſolute Roman Emperors.

The cauſe of this peculiarity in the Engliſh Government is ſaid, in the ſame Chapter, to lie in the circumſtance of the great or powerful Men, in England, being divided into two diſtinct Aſſemblies, and at the ſame time, in the principles on which ſuch a diviſion is formed. To attempt to give a demonſtration of this aſſertion otherwiſe than by facts (as is done in the Chapter here alluded to) would lead into difficulties which the Reader is little aware of. In general, the Science of Politics, conſidered as an *exact Science*, that is to ſay, as a Science capable of actual demonſtration, is infinitely deeper than the Reader ſo much perhaps as ſuſpects. The knowledge of Man, on which ſuch a Science, with its preliminary *axioms* and *definitions*, is to be grounded, has hitherto remained ſurpriſingly imperfect: as one inſtance, how little Man is known to himſelf, it might be mentioned, that no tolerable explanation of that continual human phænomenon, laughter, has been given, as yet; and the powerful complicate ſenſation which each ſex produces in the other, ſtill remains an equally inexplicable myſtery.

To conclude the above digreſſion (which may do very well for a Preface) I ſhall only add, that thoſe Speculators who will amuſe themſelves in ſeeking for the *demonſtration* of the political Theorem above expreſſed, will thereby be led through a field of obſervations which they will at firſt little expect; and in their way towards attaining ſuch demonſtration, will find the Science, commonly called Mataphyſics, to be at beſt but a very ſuperficial one, and that the Mathematics,

or at leaſt the mathematical reaſonings hitherto uſed by Men, are not ſo completely free from error as has been thought (*a*).

Out of the four Chapters added to the preſent Edition, two (the 10th and 11th, B. I.) contain, among other things, a few ſtrictures on the Courts of Equity; in which I wiſh it may be found I have not been miſtaken: of the two others, the one (19th, B. II.) contains a few obſervations on the attempts that may in different circumſtances be made, to ſet new limits on the authority of the Crown; and in the 20th, a few general thoughts are introduced on the right of taxation, and on the claim of the American Colonies in that reſpect. Any farther obſervations I may hereafter make on the Engliſh Government, ſuch as comparing it with the other Governments of Europe, and examining what difference in the manners of the inhabitants of this Country may have reſulted from it, muſt come in a new Work, if I ever undertake to treat theſe ſubjects. In regard to the American diſputes, what I may hereafter write on that account, will be

(*a*) Certain errors that are not diſcovered, are, in ſeveral caſes, compenſated by others, which are equally unperceived.

Continuing to avail myſelf of the indulgence an Author has a right to claim in a Preface, I ſhall mention, as a farther explanation of the peculiarity in the Engliſh Government above alluded to, and which is again touched upon in the Poſtſcript to this Advertiſement, that a Government may be conſidered as a great Ballet or Dance, in which, the ſame as in other Ballets, every thing depends on the diſpoſition of the figures.

introduced in a Work which I may at ſome future time publiſh, under the title of *Hiſtoire de George Trois, Roi d'Angleterre*, or, perhaps, of *Hiſtoire d'Angleterre, depuis l'année* 1765 (that in which the American Stamp duty was laid) *juſques à l'année* 178—, meaning that in which an end ſhall be put to the preſent conteſt (*a*).

Nov. 1781.

POSTSCRIPT.

Notwithſtanding the intention above expreſſed, of making no additions to the preſent Work, I have found it neceſſary, in the preſent new Edition, to render ſomewhat more complete the xviith Chapter, B. II. p. 387, *on the peculiar foundations of the Engliſh Monarchy, as a Monarchy*, as I found its tendency not to be very well underſtood; and, in fact, that Chapter contained little more than hints on the ſubject mentioned in it: the taſk, in the courſe of writing, has increaſed beyond my expectation, and has ſwelled the Chapter to about ſixty pages beyond what it was in the former Edition, ſo as almoſt to make it a kind of a ſeparate Book by itſelf. The Reader will now find it in ſeveral remarkable new inſtances to prove the fact of the peculiar *ſtability* of the executive power of the Britiſh

(*a*) A certain Book written in French, on the ſubject of the American diſputes, was, I have been told, lately attributed to me, in which I had no ſhare.

Crown; and eſpecially a much more complete delineation of the advantages that reſult from the ſtability in favour of public liberty (*a*).

Theſe advantages may be enumerated as follows. I. The numerous reſtraints the governing authority is able to bear, and extenſive freedom it can afford to allow the Subject, at its expence. II. The liberty of ſpeaking and writing, carried to the great extent it is in England. III. The unbounded freedom of the Debates in the Legiſlature. IV. The power to bear the conſtant union of all orders of Subjects againſt its prerogative. V. The freedom allowed to all individuals to take an active part in Government concerns. VI. The ſtrict impartiality with which Juſtice is dealt to all Subjects, without any reſpect whatever of perſons. VII. The lenity of the criminal law, both in regard to the mildneſs of puniſhments, and the frequent remitting of them. VIII. The ſtrict compliance of the governing Authority with the letter of the law. IX. The needleſſneſs of an armed force to ſupport itſelf by, and as a conſequence, the ſingular ſubjection of the Military to the Civil power.

The above-mentioned advantages are peculiar to the Engliſh Government. To attempt to imitate them,

(*a*) For the ſake of thoſe Readers who like exactly to know in what one Edition of a book differs from another, I ſhall mention, that five new pages have alſo been added in the xviiith Chapter, viz. page 482—486, beſides a few ſhort notes in the courſe of the Work: for inſtance, in page 140, 384, &c.

or transfer them into other Countries, with that degree of extent to which they are carried in England, without at the ſame time transferring the whole order and conjunction of circumſtances in the Engliſh Government, would prove unſucceſsful attempts. Several articles of Engliſh liberty already appear impracticable to be preſerved in the new American Commonwealths. The Iriſh Nation have of late ſucceeded to imitate ſeveral very important regulations in the Engliſh Government, and are very deſirous to render the aſſimilation complete: yet, it is poſſible, they will find many inconveniences to ariſe from their endeavours, which do not take place in England, notwithſtanding the very great general ſimilarity of circumſtances in the two kingdoms in many reſpects, and even alſo, we might add, notwithſtanding the reſpectable power and weight the Crown derives from its Britiſh dominions, both for defending its prerogative in Ireland, and preventing anarchy. I ſay, the ſimilarity in *many reſpects* between the two kingdoms; for this reſemblance may perhaps fail in regard to ſome important points: however, this is a ſubject about which I ſhall not attempt to ſay any thing, not having the neceſſary information.

The laſt Chapter in the Work, concerning the nature of the *Diviſions that take place in this Country*, I have left in every Engliſh Edition as I wrote it at firſt in French. With reſpect to the exact manner of the Debates in Parliament, mentioned in that Chapter, I ſhould not be able to ſay more at preſent than I was at that time, as I never had an opportunity to hear the Debates in either Houſe. In regard to the Diviſions

in general to which the ſpirit of party gives riſe, I did perhaps the bulk of the People ſomewhat more honour than they really deſerve, when I repreſented them as being free from any violent diſpoſitions in that reſpect: I have ſince found, that, like the bulk of Mankind in all Countries, they ſuffer themſelves to be influenced by vehement prepoſſeſſions for this or that ſide of public queſtions, commonly in proportion as their knowledge of the ſubjects is imperfect. It is however a fact, that their political prepoſſeſſions and party ſpirit are not productive in this Country, of thoſe dangerous conſequences which might be feared from the warmth with which they are ſometimes manifeſted. But this ſubject, or in general the ſubject of the political quarrels and diviſions in this country, is not an article one may venture to meddle with in a ſingle Chapter; I have therefore let this ſubſiſt, without touching it.

I ſhall however obſerve, before I conclude, that there is an accidental circumſtance in the Engliſh Government, which prevents the party ſpirit by which the Public are uſually influenced, from producing thoſe laſting and rancorous diviſions in the Community which have peſtered ſo many other free States, making of the ſame Nation as it were two diſtinct People, in a kind of conſtant warfare with each other. The circumſtance I mean, is, the frequent reconciliations (commonly to quarrel again afterward) that take place between the Leaders of parties, by which the moſt violent and ignorant Claſs of their partiſans are bewildered, and made to loſe the ſcent. By the frequent coalitions between *Whig* and *Tory* Leaders, even that

party diſtinction, the moſt famous in the Engliſh Hiſtory, has now become uſeleſs: the meaning of the words has thereby been rendered ſo perplexed that nobody can any longer give a tolerable definition of them; and thoſe perſons who now and then aim at gaining popularity by claiming the merit of belonging to either party, are ſcarcely underſtood. The late *Coalition* between two certain Leaders has done away and prevented from ſettling, that violent party ſpirit to which the adminiſtration of Lord Bute had given riſe, and which the American diſputes had carried ſtill farther. Though this Coalition has met with much obloquy, I take the liberty to rank myſelf in the number of its advocates, ſo far as the circumſtance here mentioned.

May, 1784.

THE TANJORE MAHARAJA SERFOJI'S SARASWATI MAHAL

MAHARAJA SERFOGI'S SARASWATI MAHAL

THE

CONSTITUTION

OF

ENGLAND.

INTRODUCTION.

THE ſpirit of Philoſophy which peculiarly diſtinguiſhes the preſent age, after having corrected a number of errors fatal to Society, ſeems now to be directed towards the principles of Society itſelf; and we ſee prejudices vaniſh, which are difficult to overcome, in proportion as it is dangerous to attack them (*a*). This riſing freedom of ſentiment, the neceſſary

(*a*) As every popular notion which may contribute to the ſupport of an arbitrary Government, is at all times vigilantly protected by the whole ſtrength of it, political

fore-runner of political freedom, led me to imagine that it would not be unacceptable to the Public, to be made acquainted with the principles of a Conſtitution on which the eye of curioſity ſeems now to be univerſally turned; and which, though celebrated as a model of perfection, is yet but little known to its admirers.

I am aware that it will be deemed preſumptuous in a Man who has paſſed the greateſt part of his life out of England, to attempt a delineation of the Engliſh Government; a ſyſtem which is ſuppoſed to be ſo complicated as not to be underſtood or developed, but by thoſe who have been initiated in the myſteries of it from their infancy.

But, though a foreigner in England, yet, as a native of a free Country, I am no ſtranger to thoſe circumſtances which conſtitute or characteriſe Liberty. Even the great diſproportion between the Republic of which I am

prejudices are, laſt of all, if ever, ſhaken off by a Nation ſubjected to ſuch a Government. A great change in this reſpect, however, has of late taken place in France, where this book was firſt publiſhed, and opinions are now diſcuſſed there, and tenets avowed, which, in the time of Lewis the Fourteenth, would have appeared downright blaſphemy; it is to this an alluſion is made above.

a member, and in which I formed my principles, and the Britiſh Empire, has perhaps only contributed to facilitate my political inquiries.

As the Mathematician, the better to diſcover the proportions he inveſtigates, begins with freeing his *equation* from *coefficients*, or ſuch other quantities as only perplex without properly conſtituting it,—ſo it may be advantageous to the inquirer after the cauſes that produce the equilibrium of a government, to have previouſly ſtudied them, diſengaged from the apparatus of fleets, armies, foreign trade, diſtant and extenſive dominions, in a word, from all thoſe brilliant circumſtances which ſo greatly affect the external appearance of a powerful Society, but have no eſſential connection with the real principles of it.

It is upon the paſſions of Mankind, that is, upon cauſes which are unalterable, that the action of the various parts of a State depends. The machine may vary as to its dimenſions, but its movement and acting ſprings ſtill remain intrinſically the ſame; and that time cannot be conſidered as loſt, which has been ſpent in ſeeing them act and move in a narrower circle.

One other consideration I will suggest, which is, that the very circumstance of being a foreigner, may of itself be attended, in this case, with a degree of advantage. The English themselves (the observation cannot give them any offence) having their eyes open, as I may say, upon their liberty, from their first entrance into life, are perhaps too much familiarised with its enjoyment, to inquire, with real concern, into its causes. Having acquired practical notions of their government, long before they have meditated on it, and these notions being slowly and gradually imbibed, they at length behold it without any high degree of sensibility; and they seem to me, in this respect, to be like the recluse inhabitant of a palace, who is perhaps in the worst situation for attaining a complete idea of the whole, and never experienced the striking effect of its external structure and elevation; or, if you please, like a Man who, having always had a beautiful and extensive scene before his eyes, continues for ever to view it with indifference.

But a stranger, beholding at once the various parts of a Constitution displayed before him, which, at the same time that it carries liberty to its height, has guarded against in-

conveniences feemingly inevitable, beholding in fhort thofe things carried into execution, which he had ever regarded as more defirable than poffible, he is ftruck with a kind of admiration; and it is neceffary to be thus ftrongly affected by objects, to be enabled to reach the general principle which governs them.

Not that I mean to infinuate that I have penetrated with more acutenefs into the Conftitution of England than others; my only defign in the above obfervations, was to obviate an unfavourable, though natural, prepoffeffion; and if, either in treating of the caufes which originally produced the Englifh liberty, or of thofe by which it continues to be maintained, my obfervations fhould be found new or fingular, I hope the Englifh reader will not condemn them, but where they fhall be found inconfiftent with Hiftory, or with daily experience. Of readers in general I alfo requeft, that they will not judge of the principles I fhall lay down, but from their relation to thofe of human nature: a confideration which is almoft the only one effential, and has been hitherto too much neglected by the Writers on the fubject of Government.

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CHAP I.

Causes of the liberty of the English Nation.— Reasons of the difference between the Government of England, and that of France. — In England, the great power of the Crown under the Norman Kings, created an union between the Nobility and the People.

WHEN the Romans, attacked on all sides by the Barbarians, were reduced to the necessity of defending the centre of their Empire, they abandoned Great Britain as well as several other of their distant provinces. The island, thus left to itself, became a prey to the Nations inhabiting the shores of the Baltic; who, having first destroyed the ancient inhabitants, and for a long time reciprocally annoyed each other, established several Sovereignties in the southern part of the Island, afterwards called England, which at length were united, under Egbert, into one Kingdom.

The successors of this Prince, denominated the Anglo-Saxon Princes, among whom Alfred the Great and Edward the Confessor are particularly celebrated, reigned for about two hundred years; but, though our knowledge of the prin-

cipal events of this early period of the Engliſh Hiſtory is in ſome degree exact, yet we have but vague and uncertain accounts of the nature of the Government which thoſe Nations introduced.

It appears to have had little more affinity with the preſent Conſtitution, than the general relation, common indeed to all the Governments eſtabliſhed by the Northern Nations, that of having a King and a Body of Nobility; and the ancient Saxon Government is "left us in ſtory (to uſe the expreſſions of "Sir William Temple on the ſubject) but like "ſo many antique, broken, or defaced pic- "tures, which may ſtill repreſent ſomething "of the cuſtoms and faſhions of thoſe ages, "though little of the true lines, proportions, "or reſemblance (*a*)."

It is at the era of the Conqueſt, that we are to look for the real foundation of the Engliſh Conſtitution. From that period, ſays Spelman, *novus ſæclorum naſcitur ordo* (*b*). William of Normandy, having defeated Harold, and made

(*a*) See his Introduction to the Hiſtory of England.

(*b*) See Spelman, *Of Parliaments.* — It has been a favourite theſis with many Writers, to pretend that the Saxon Government was, at the time of the Conqueſt, by

himſelf maſter of the Crown, ſubverted the ancient fabric of the Saxon Legiſlation: he

no means ſubverted; that William of Normandy legally acceded to the Throne, and conſequently to the engagements of the Saxon Kings; and much argument has in particular been employed with regard to the word *Conqueſt*, which, it has been ſaid, in the feudal ſenſe only meant *acquiſition*. Theſe opinions have been particularly inſiſted upon in times of popular oppoſition: and, indeed, there was a far greater probability of ſucceſs, in raiſing among the People the notions familiar to them of legal claims and long eſtabliſhed cuſtoms, than in arguing with them from the no leſs rational, but leſs determinate, and ſomewhat dangerous doctrines, concerning the original rights of Mankind, and the lawfulneſs of at all times oppoſing force to an oppreſſive Government.

But if we conſider that the manner in which the public Power is formed in a State, is ſo very eſſential a part of its Government, and that a thorough change in this reſpect was introduced into England by the Conqueſt, we ſhall not ſcruple to allow that a new *Government* was eſtabliſhed. Nay, as almoſt the whole landed property in the Kingdom was at that time transferred to other hands, a new Syſtem of criminal Juſtice introduced, and the language of the law moreover altered, the revolution may be ſaid to have been ſuch as is not perhaps to be paralleled in the Hiſtory of any other country.

Some Saxon laws, favourable to the liberty of the people, were indeed again eſtabliſhed under the ſucceſſors of William; but the introduction of ſome new modes of proceeding in the Courts of Juſtice, and of a few particular laws, cannot, ſo long as the ruling Power in the State remains the ſame,

exterminated, or expelled, the former occupiers of lands, in order to diſtribute their poſſeſſions among his followers; and eſtabliſhed the feudal ſyſtem of Government, as better adapted to his ſituation, and indeed the only one of which he poſſeſſed a competent idea.

be ſaid to be the introduction of a new Government; and as when the laws in queſtion were again eſtabliſhed, the public power in England continued in the ſame channel where the Conqueſt has placed it, they were more properly new modifications of the Anglo-Norman Conſtitution, than they were the abolition of it; or ſince they were again adopted from the Saxon Legiſlation, they were rather imitations of that Legiſlation, than the reſtoration of the Saxon Government.

Contented, however, with the two authorities I have above quoted (*Spelman* and *Temple*), I ſhall dwell no longer on a diſcuſſion of the preciſe identity, or difference, of two Governments, that is of two ideal ſyſtems, which only exiſt in the conceptions of men. Nor do I wiſh to explode a doctrine, which, in the opinion of ſome perſons, giving an additional ſanction and dignity to the Engliſh Government, contributes to increaſe their love and reſpect for it. It will be ſufficient for my purpoſe, if the reader ſhall be pleaſed to grant that a material change was, at the time of the Conqueſt, effected in the Government then exiſting, and is accordingly diſpoſed to admit the proofs that will preſently be laid before him, of ſuch change having prepared the eſtabliſhment of the preſent Engliſh Conſtitution.

This ſort of Government prevailed alſo in almoſt all the other parts of Europe. But inſtead of being eſtabliſhed by dint of arms and all at once, as in England, it had only been eſtabliſhed on the Continent, and particularly in France, through a long ſeries of ſlow ſucceſſive events; a difference of circumſtances this, from which conſequences were in time to ariſe, as important as they were at firſt difficult to be foreſeen.

The German Nations who paſſed the Rhine to conquer Gaul, were in a great degree independent. Their princes had no other title to their power, but their own valour and the free election of the People; and as the latter had acquired in their foreſts but contracted notions of ſovereign authority, they followed a chief, leſs in quality of ſubjects, than as companions in conqueſt.

Beſides, this conqueſt was not the irruption of a foreign army, which only takes poſſeſſion of fortified towns. It was the general invaſion of a whole People, in ſearch of new habitations; and as the number of the Conquerors bore a great proportion to that of the conquered, who were at the ſame time enervated by long peace, the expedition was no ſooner completed than

all danger was at an end, and of courſe their union alſo. After dividing among themſelves what lands they thought proper to occupy, they ſeparated; and though their tenure was at firſt only precarious, yet in this particular, they depended not on the king, but on the general aſſembly of the nation (*a*).

Under the Kings of *the firſt race*, the fiefs, by the mutual connivance of the Leaders, at firſt became annual; afterwards, held for life. Under the deſcendants of Charlemain, they became hereditary (*b*). And when at length Hugh Capet effected his own election to the prejudice of Charles of Lorrain, and intended to render the Crown, which in fact was a fief, hereditary in his own family (*c*), he eſtabliſhed the hereditari-

(*a*) The fiefs were originally called, *terræ jure beneficii conceſſæ;* and it was not till under Charles *le Gros* the term *fief* began to be in uſe. See BENEFICIUM, *Gloſſ. Du Cange.*

(*b*) *Apud Francos vero, ſenſim pedetentimque, jure hæreditario ad hæredes tranſierunt feuda; quod labente ſæculo nono incipis.* See FEUDUM—Du Cange.

(*c*) Hottoman has proved beyond a doubt, in his *Francogallia*, that under the two firſt races of Kings, the Crown of France was elective. The Princes of the reigning family had nothing more in their favour, than the cuſtom of chuſing one of that houſe.

TANJORE MAHARAJA SERFOJI'S SARASWATI

ſhip of fiefs as a general principle; and from this epoch, authors date the complete eſtabliſhment of the feudal ſyſtem in France.

On the other hand, the Lords, who gave their ſuffrages to Hugh Capet, forgot not the intereſt of their own ambition. They completed the breach of thoſe feeble ties which ſubjected them to the royal authority, and became every where independent. They left the King no juriſdiction either over themſelves, or their vaſſals; they reſerved the right of waging war with each other; they even aſſumed the ſame privilege, in certain caſes, with regard to the King himſelf (*a*); ſo that if Hugh Capet, by rendering the Crown hereditary, laid the foundation of the greatneſs of his family, and of the Crown itſelf, yet he added little to his own authority, and acquired ſcarcely any thing more

(*a*) The principal of theſe caſes was, when the King refuſed to appoint Judges to decide a difference between himſelf and one of his firſt Barons: the latter had then a right to take up arms againſt the King; and the ſubordinate Vaſſals were ſo dependent on their immediate Lords, that they were obliged to follow them againſt the Lord Paramount. St. Louis, though the power of the Crown was in his time much increaſed, was obliged to confirm both this privilege of the firſt Barons, and this obligation of their Vaſſals.

than a nominal ſuperiority over the number of Sovereigns who then ſwarmed in France (*a*).

But the eſtabliſhment of the feudal ſyſtem in England, was an immediate and ſudden conſequence of that conqueſt which introduced it. Beſides, this conqueſt was made by a Prince who kept the greater part of his army in his own pay, and who was placed at the head of a people over whom he was an hereditary Sovereign: circumſtances which gave a totally different turn to the Government of that kingdom.

Surrounded by a warlike though a conquered Nation, William kept on foot part of his army. The Engliſh, and after them the Normans themſelves, having revolted, he cruſhed both; and the new King of England, at the head of victorious troops, having to do with two Nations lying under a reciprocal check from the

(*a*) " The Grandees of the Kingdom," ſays Mezeray, " thought that Hugh Capet ought to put up with all their " inſults, becauſe they had placed the Crown on his head: " nay, ſo great was their licentiouſneſs, that on his writ- " ing to Audebert, Viſcount of Perigueux, ordering him to " raiſe the ſiege he had laid to Tours, and aſking him, by " way of reproach, who had made him a Viſcount? that " Nobleman haughtily anſwered, *Not you, but thoſe who* " *made you a King*. [Non pas vous, mais ceux qui vous ont " fait Roi.]"

enmity they bore to each other, and moreover equally ſubdued by a ſenſe of their unfortunate attempts of reſiſtance, found himſelf in the moſt favourable circumſtances for becoming an abſolute Monarch; and his laws, thus promulgated in the midſt as it were of thunder and lightning, impoſed the yoke of deſpotiſm both on the victors and the vanquiſhed.

He divided England into ſixty thouſand two hundred and fifteen military fiefs, all held of the Crown; the poſſeſſors of which were, on pain of forfeiture, to take up arms and repair to his ſtandard on the firſt ſignal: he ſubjected not only the common people, but even the Barons, to all the rigours of the feudal Government: he even impoſed on them his tyrannical foreſt laws (*a*).

He aſſumed the prerogative of impoſing taxes. He inveſted himſelf with the whole executive power of Government. But what

(*a*) He reſerved to himſelf an excluſive privilege of killing game throughout England, and enacted the ſevereſt penalties on all who ſhould attempt it without his permiſſion. The ſuppreſſion, or rather mitigation of theſe penalties, was one of the articles of the *Charta de Foreſta*, which the Barons afterwards obtained by force of arms. *Nullus de cætero amittat vitam, vel membra, pro venatione noſtrâ.* Ch. de Foreſt. Art. 10.

was of the greateſt conſequence, he arrogated to himſelf the moſt extenſive judicial power by the eſtabliſhment of the Court which was called *Aula Regis*; a formidable tribunal, which received appeals from all the courts of the Barons, and decided in the laſt reſort on the eſtates, honour, and lives of the Barons themſelves; and which, being wholly compoſed of the great officers of the Crown, removable at the King's pleaſure, and having the King himſelf for Preſident, kept the firſt Nobleman in the Kingdom under the ſame controul as the meaneſt ſubject.

Thus, while the Kingdom of France, in conſequence of the ſlow and gradual formation of the feudal government, found itſelf, in the iſſue, compoſed of a number of parts ſimply placed by each other, and without any reciprocal adherence, the Kingdom of England on the contrary, in conſequence of the ſudden and violent introduction of the ſame ſyſtem, became a compound of parts united by the ſtrongeſt ties, and the regal authority, by the preſſure of its immenſe weight, conſolidated the whole into one compact indiſſoluble body.

To this difference in the original Conſtitution of France and England, that is, in the original power of their Kings, we are to attri-

bute the difference, ſo little analogous to its original cauſe, of their preſent Conſtitutions. This it is which furniſhes the ſolution of a problem which, I muſt confeſs, for a long time perplexed me, and explains the reaſon why, of two neighbouring Nations, ſituated almoſt under the ſame climate, and having one common origin, the one has attained the ſummit of liberty, the other has gradually ſunk under an abſolute Monarchy.

In France, the Royal authority was indeed inconſiderable; but this circumſtance was by no means favourable to the general liberty. The Lords were every thing: and the bulk of the Nation were accounted nothing. All thoſe wars which were made on the King, had not liberty for their object; for of this the Chiefs already enjoyed but too great a ſhare: they were the mere effect of private ambition or caprice. The people did not engage in them as aſſociates in the ſupport of a cauſe common to all: they were dragged, blindfold and like ſlaves, to the ſtandard of their leaders. In the mean time, as the laws by virtue of which their Maſters were conſidered as Vaſſals, had no relation to thoſe by which they were themſelves bound as ſubjects, the reſiſtance of which they were made

the inſtruments, never produced any advantageous conſequences in their favour, nor did it eſtabliſh any principle of freedom that was in any caſe applicable to them.

The inferior Nobles, who ſhared in the independence of the ſuperior Nobility, added alſo the effects of their own inſolence to the deſpotiſm of ſo many Sovereigns; and the people, wearied out by ſufferings, and rendered deſperate by oppreſſion, at times attempted to revolt. But being parcelled out into ſo many different States, they could never perfectly agree, either in the nature, or the times of their complaints. The inſurrections, which ought to have been general, were only ſucceſſive and particular. In the mean time the Lords, ever uniting to avenge their common cauſe as Maſters, fell with irreſiſtible advantage on Men who were divided; the People were thus ſeparately, and by force, brought back to their former yoke; and Liberty, that precious offspring, which requires ſo many favourable circumſtances to foſter it, was every where ſtifled in its birth (*a*).

(*a*) It may be ſeen in Mezeray, how the Flemings, at the time of the great revolt which was cauſed, as he ſays, "by "the inveterate hatred of the Nobles (les Gentils-hommes) "againſt the people of Ghent," were cruſhed by the union

At length, when by conqueſts, by eſcheats, or by Treaties, the ſeveral Provinces came to be *re-united* (*a*) to the extenſive and continually increaſing dominions of the Monarch, they became ſubject to their new Maſter, already trained

of almoſt all the Nobility of France.—See *Mezeray, Reign of Charles* VI.

(*a*) The word *re-union* expreſſes in the French law, or Hiſtory, the reduction of a Province to an immediate dependence on the Crown. The French lawyers, who were at all times remarkably zealous for the aggrandiſement of the Crown (a zeal which would not have been blameable, if it had been exerted only in the ſuppreſſion of lawleſs Ariſtocracy), always contended that when a province once came into the poſſeſſion of the King, even any private dominion of his before he acceded to the Throne, it became *re-united* for ever: the *Ordonnance* of Moulins, in the year 1566, has ſince given a thorough ſanction to theſe Principles. The re-union of a province might be occaſioned, firſt, by the caſe juſt mentioned, of the acceſſion of the poſſeſſor of it to the throne: thus at the acceſſion of Henry IV. (the ſiſter of the late King being excluded by the Salic law) Navarre and Bearn were *re-united*. Secondly, by the felony of the poſſeſſor, when the King was able to force by dint of arms, the judgment paſſed by the Judges he had appointed: thus the ſmall Lordſhip of Rambouillet was ſeized upon by Hugh Capet; on which authors remark that it was the firſt dominion that was re-united: and the duchy of Normandy was afterwards taken in the ſame manner by Philip Auguſtus from John King of England, condemned for the murder of Arthur Duke of Britanny. Thirdly, by the

to obedience. The few privileges which the Cities had been able to preserve, were little respected by a Sovereign who had himself entered into no engagement for that purpose; and as the *re-unions* were made at different times, the King was always in a condition to overwhelm every

last will of the possessor: Provence was re-united in this manner, under the reign of Lewis XI. Fourthly, by intermarriages: this was the case of the county of Champagne, under Philip the Fair; and of Britanny under Francis I. Fifthly, by the failure of heirs of the blood, and sometimes of heirs male: thus Burgundy was seized upon by Lewis XI. after the death of Charles the Bold, Duke of that Province. Lastly, by purchases: thus Philip of Valois purchased the Barony of Montpellier; Henry IV. the Marquisat of Saluces; Lewis XIII. the Principality of Sedan, &c.

These different Provinces, which with others united, or *re-united*, after a like manner, now compose the French Monarchy, not only thus conferred on their respective Sovereigns different titles, but also differed from each other with respect to the laws which they followed, and still follow: the one are governed by the Roman law, and are called *Pays de Droit écrit*; the others follow particular customs, which in process of time have been set down in writing, and are called *Pays de Droit Coutumier*. In those Provinces the people had, at times, purchased privileges from their Princes, which in the different Provinces were also different, according to the wants and temper of the Princes who granted them.

new Province that accrued to him, with the weight of all thoſe he already poſſeſſed.

As a farther conſequence of theſe differences between the times of the *re-unions*, the ſeveral parts of the Kingdom entertained no views of aſſiſting each other. When ſome reclaimed their privileges, the others, long ſince reduced to ſubjection, had already forgotten theirs. Beſides, theſe privileges, by reaſon of the differences of the Governments under which the Provinces had formerly been held, were alſo almoſt every where different: the circumſtances which happened in one place, thus bore little affinity to thoſe which fell out in another; the ſpirit of union was loſt, or rather had never exiſted: each Province, reſtrained within its particular bounds, only ſerved to inſure the general ſubmiſſion; and the ſame cauſes which had reduced that warlike, ſpirited Nation, to a yoke of ſubjection, concurred alſo to keep them under it.

Thus Liberty periſhed in France, becauſe it wanted a favourable culture and proper ſituation. Planted, if I may ſo expreſs myſelf, but juſt beneath the ſurface, it preſently expanded, and ſent forth ſome large ſhoots; but having taken no root, it was ſoon plucked up. In England, on the contrary, the ſeed lying at a

great depth, and being covered with an enormous weight, ſeemed at firſt to be ſmothered; but it vegetated with the greater force; it imbibed a more rich and abundant nouriſhment; its ſap and juiçe became better aſſimilated, and it penetrated and filled up with its roots the whole body of the ſoil. It was the exceſſive power of the King which made England free, becauſe it was this very exceſs that gave riſe to the ſpirit of union, and of concerted reſiſtance. Poſſeſſed of extenſive demeſnes, the King found himſelf independent; veſted with the moſt formidable prerogatives, he cruſhed at pleaſure the moſt powerful Barons in the Realm: it was only by cloſe and numerous confederacies therefore, that theſe could reſiſt his tyranny; they even were compelled to aſſociate the People in them, and make them partners of public Liberty.

Aſſembled with their Vaſſals in their great Halls, where they diſpenſed their hoſpitality, deprived of the amuſements of more poliſhed Nations, naturally inclined, beſides, freely to expatiate on objects of which their hearts were full, their converſation naturally turned on the injuſtice of the public impoſitions, on the tyranny of the judicial proceedings, and, above all, on the deteſted foreſt laws.

Destitute of an opportunity of cavilling about the meaning of laws the terms of which were precise, or rather disdaining the resource of sophistry, they were naturally led to examine into the first principles of Society; they enquired into the foundations of human authority, and became convinced, that Power, when its object is not the good of those who are subject to it, is nothing more than the *right of the strongest*, and may be repressed by the exertion of a similar right.

The different orders of the feudal Government, as established in England, being connected by tenures exactly similar, the same maxims which were laid down as true against the Lord paramount in behalf of the Lord of an upper fief, were likewise to be admitted against the latter, in behalf of the owner of an inferior fief. The same maxims were also to be applied to the possessor of a still lower fief: they farther descended to the freeman, and to the peasant; and the spirit of liberty, after having circulated through the different branches of the feudal subordination, thus continued to flow through successive homogeneous channels; it forced a passage to itself into the remotest ramifications, and the principle of primeval equa-

lity became every where diffufed and eftablifhed. A facred principle, which neither injuftice nor ambition can erafe; which exifts in every breaft, and, to exert itfelf, requires only to be awakened among the numerous and oppreffed claffes of Mankind.

But when the Barons, whom their perfonal confequence had at firft caufed to be treated with caution and regard by the Sovereign, began to be no longer fo, when the tyrannical laws of the Conqueror became ftill more tyrannically executed, the confederacy, for which the general oppreffion had paved the way, inftantly took place. The Lord, the Vaffal, the inferior Vaffal, all united. They even implored the affiftance of the peafants and cottagers; and that haughty averfion with which on the Continent the Nobility repaid the induftrious hands which fed them, was, in England, compelled to yield to the preffing neceffity of fetting bounds to the Royal authority.

The People, on the other hand, knew that the caufe they were called upon to defend, was a caufe common to all; and they were fenfible, befides, that they were the neceffary fupporters of it. Inftructed by the example of their Leaders, they fpoke and ftipulated

conditions for themſelves: they inſiſted that, for the future, every individual ſhould be intitled to the protection of the law; and thus did thoſe rights with which the Lords had ſtrengthened themſelves, in order to oppoſe the tyranny of the Crown, become a bulwark which was, in time, to reſtrain their own.

CHAP. II.

A ſecond advantage England had over France:—it formed one undivided State.

IT was in the reign of Henry the Firſt, about forty years after the Conqueſt, that we ſee the above cauſes begin to operate. This Prince having aſcended the throne to the excluſion of his elder brother, was ſenſible that he had no other means to maintain his power than by gaining the affection of his ſubjects; but, at the ſame time, he perceived that it muſt be the affection of the whole nation: he, therefore, not only mitigated the rigour of the feudal laws in favour of the Lords, but alſo annexed as a condition to the Charter he granted, that the Lords ſhould allow the ſame freedom to their reſpective Vaſſals. Care was even taken to

abolish those laws of the Conqueror which lay heaviest on the lower classes of the People (*a*).

Under Henry the Second, liberty took a farther stride; and the ancient *Trial by Jury*, a mode of procedure which is at present one of the most valuable parts of the English law, made again, though imperfectly, its appearance.

But these causes, which had worked but silently and slowly under the two Henrys, who were Princes in some degree just, and of great capacity, manifested themselves, at once, under the despotic reign of King John. The royal prerogative, and the forest laws, having been exerted by this Prince to a degree of ex-

(*a*) Amongst others, the law of the *Curfeu*. It might be matter of curious discussion to inquire what the Anglo-Saxon Government would in process of time have become, and of course the Government of England be at this present time, if the event of the Conquest had never taken place; which, by conferring an immense as well as unusual power on the head of the feudal System, compelled the Nobility to contract a lasting and sincere union with the People. It is very probable that the English Government would at this day be the same as that which long prevailed in Scotland, where the King and Nobles engrossed, jointly, or by turns, the whole power in the State, the same as in Sweden, the same as in Denmark, countries whence the Anglo-Saxons came.

ceffive feverity, he foon beheld a general confederacy formed againft him: and here we muft obferve another circumftance, highly advantageous, as well as peculiar to England.

England was not, like France, an aggregation of a number of different Sovereignties: it formed but one State, and acknowledged but one Mafter, one general title. The fame laws, the fame kind of dependence, confequently the fame notions, the fame interefts, prevailed throughout the whole. The extremities of the kingdom could, at all times, unite to give a check to the exertions of an unjuft power. From the river Tweed to Portfmouth, from Yarmouth to the Land's End, all was in motion: the agitation increafed from the diftance like the rolling waves of an extenfive fea; and the Monarch, left to himfelf, and deftitute of refources, faw himfelf attacked on all fides by an univerfal combination of his fubjects.

No fooner was the ftandard fet up againft John, than his very Courtiers forfook him. In this fituation, finding no part of his kingdom lefs irritated againft him than another, having no detached province which he could engage in his defence by promifes of pardon,

or of peculiar conceſſions, the trivial though never-failing reſources of Government, he was compelled with ſeven of his attendants, all that remained with him, to ſubmit himſelf to the diſpoſal of his ſubjects; and he ſigned at Running Mead (*a*) the Charter of the Foreſt, together with that famous charter, which, from its ſuperior and extenſive importance, is denominated *Magna Charta*.

By the former the moſt tyrannical part of the foreſt laws was aboliſhed; and by the latter, the rigour of the feudal laws was greatly mitigated in favour of the Lords. But this Charter did not ſtop there; conditions were alſo ſtipulated in favour of the numerous body of the people who had concurred to obtain it, and who claimed, with ſword in hand, a ſhare in that ſecurity it was meant to eſtabliſh. It was hence inſtituted by the Great Charter, that the ſame ſervices which were remitted in favour of the Barons, ſhould be in like manner remitted in favour of their Vaſſals. This Charter moreover eſtabliſhed an equality of weights and meaſures throughout England; it exempted the Merchants from arbitrary impoſts, and gave

(*a*) Anno 1215.

them liberty to enter and depart the Kingdom at pleaſure; it even extended to the loweſt orders of the State, ſince it enacted, that the *Villain*, or Bondman, ſhould not be ſubject to the forfeiture of his implements of tillage. Laſtly, by the twenty-ninth article of the ſame Charter, it was enacted, that no ſubject ſhould be exiled, or in any ſhape whatever moleſted, either in his perſon or effects, otherwiſe than by judgment of his peers, and according to the law of the land (*a*): an article ſo important, that it may be ſaid to comprehend the whole end and deſign of political ſocieties; and from that moment the Engliſh would have been a free People, if there were not an immenſe diſtance between the making of laws, and the obſerving of them.

But though this Charter wanted moſt of thoſe ſupports which were neceſſary to inſure reſpect to it, though it did not ſecure to the

(*a*) "Nullus liber homo capiatur, vel impriſonetur, vel "diſſeſietur de libero tenemento ſuo, vel libertatibus, vel "liberis conſuetudinibus ſuis; aut utlagetur, aut exuletur, "aut aliquo modo deſtruatur; nec ſuper eum ibimus, nec "ſuper eum mittemus, niſi per legale judicium parium "ſuorum, vel per legem terræ. Nulli vendemus, nulli "negabimus, aut differemus, juſtitiam vel rectum." *Magna Chart.* cap. xxix.

poor and friendlefs any certain and legal methods of obtaining the execution of it (provifions which numberlefs tranfgreffions alone could, in procefs of time, point out), yet it was a prodigious advance towards the eftablifhment of public liberty. Inftead of the general maxims refpecting the rights of the People and the duties of the Prince (maxims againft which ambition perpetually contends, and which it fometimes even openly and abfolutely denies), here was fubftituted a written law, that is, a truth admitted by all parties, which no longer required the fupport of argument. The rights and privileges of the individual, as well in his perfon as in his property, became fettled axioms. The Great Charter, at firft enacted with fo much folemnity, and afterwards confirmed at the beginning of every fucceeding reign, became like a general banner perpetually fet up for the union of all claffes of the people; and the foundation was laid on which thofe equitable laws were to rife, which offer the fame affiftance to the poor and weak, as to the rich and powerful (*a*).

(*a*) The reader, to be more fully convinced of the reality of the caufes to which the liberty of England has been here afcribed, as well as to the truth of the obfer-

Under the long reign of Henry the Third, the differences which aroſe between the King and the Nobles, rendered England a ſcene of confuſion. Amidſt the viciſſitudes which the fortune of war produced in their mutual conflicts, the People became ſtill more and more ſenſible of their importance, and ſo did in conſequence both the King and the Barons alſo. Alternately courted by both parties, they obtained a confirmation of the Great Charter, and even the addition of new privileges, by the ſtatutes of Merton and of Marlebridge. But I

vations made at the ſame time on the ſituation of the people of France, needs only to compare the Great Charter, ſo extenſive in its proviſions, and in which the Barons ſtipulated in favour even of the Bondman, with the treaty concluded between Lewis the Eleventh and ſeveral of the Princes and Peers of France, intitled, *A Treaty made at St. Maur, between the Dukes of Normandy, Calabre, Bretagne, Bourbonnois, Auvergne, Nemours; the Counts of Charolois, Armagnac, and St. Pol, and other Princes of France, riſen up in ſupport of the public good, of the one part; and King Lewis the Eleventh of the other, October* 29, 1465. In this Treaty, which was made in order to terminate a war that was called the war for the Public good *(pro bono Publico)*, no proviſion was made but concerning the particular power of a few Lords: not a word was inſerted in favour of the people. This treaty may be ſeen at large in the *pieces juſtificatives* annexed to the *Memoires de Philippe de Comines*.

haſten to reach the grand epoch of the reign of Edward the Firſt; a Prince, who, from his numerous and prudent laws, has been denominated the Engliſh Juſtinian.

Poſſeſſed of great natural talents, and ſucceeding a Prince whoſe weakneſs and injuſtice had rendered his reign unhappy, Edward was ſenſible that nothing but a ſtrict adminiſtration of juſtice, could, on the one ſide, curb a Nobility whom the troubles of the preceding reign had rendered turbulent, and, on the other, appeaſe and conciliate the people, by ſecuring the property of individuals. To this end, he made juriſprudence the principal object of his attention; and ſo much did it improve under his care, that the mode of proceſs became fixed and ſettled; Judge Hale going even ſo far as to affirm, that the Engliſh laws arrived at once, *& quaſi per ſaltum*, at perfection, and that there has been more improvement made in them during the *firſt* thirteen years of the reign of Edward, than all the ages ſince his time have done.

But what renders this æra particularly intereſting, is, that it affords the firſt inſtance of the admiſſion of the Deputies of Towns and Boroughs into (*a*) Parliament.

(*a*) I mean their legal origin; for the Earl of Lei-

Edward, continually engaged in wars, either againſt Scotland or on the Continent, ſeeing moreover his demeſnes conſiderably diminiſhed, was frequently reduced to the moſt preſſing neceſſities. But though, in conſequence of the ſpirit of the times, he frequently indulged himſelf in particular acts of injuſtice, yet he perceived that it was impoſſible to extend a general oppreſſion over a body of Nobles, and a People, who ſo well knew how to unite in a common cauſe. In order to raiſe ſubſidies, therefore, he was obliged to employ a new method, and to endeavour to obtain through the conſent of the People, what his Predeceſſors had hitherto expected from their own power. The ſheriffs were ordered to invite the Towns and Boroughs of the different Counties to ſend Deputies to Parliament; and it is from this æra that we are to date the origin of the Houſe of Commons (*a*).

It muſt be confeſſed, however, that theſe Deputies of the People were not, at firſt, poſſeſſed of any conſiderable authority. They

ceſter, who had uſurped the power during part of the preceding reign, had called ſuch Deputies up to Parliament before.

(*a*) Anno 1295.

were far from enjoying thoſe extenſive privileges which, in theſe days, conſtitute the Houſe of Commons a collateral part of the Government: they were in thoſe times called up only to provide for the wants of the King, and approve of the reſolutions taken by him and the aſſembly of the Lords (*a*). But it was nevertheleſs a great point gained, to have obtained the right of uttering their complaints, aſſembled in a body and in a legal way—to have acquired, inſtead of the dangerous reſource of inſurrections, a lawful and regular mean of influencing the motions of the Government, and thenceforth to have become a part of it. Whatever diſadvantage might attend the ſtation at firſt allotted to the Repreſentatives of the People, it was ſoon to be compenſated by the preponderance the

(*a*) The end mentioned in the Summons ſent to the Lords, was *de arduis negotiis regni tractaturi, & conſilium impenſuri:* the Summons ſent to the Commons was, *ad faciendum & conſentiendum.* The power enjoyed by the latter was even inferior to what they might have expected from the Summons ſent to them: "In moſt of the "ancient Statutes they are not ſo much as named; and "in ſeveral, even when they are mentioned, they are "diſtinguiſhed as petitioners merely, the Aſſent of the "Lords being expreſſed in contradiſtinction to the Requeſt "of the Commons." See on this ſubject the Preface to the Collection of the Statutes at Large, by Ruffhead, and the authorities quoted therein.

People neceſſarily acquire, when they are enabled to act and move with method, and eſpecially with concert (*a*).

And indeed this privilege of naming Repreſentatives, inſignificant as it might then appear, preſently manifeſted itſelf by the moſt conſiderable effects. In ſpite of his reluctance, and after many evaſions unworthy of ſo great a King, Edward was obliged to confirm the Great Charter; he even confirmed it eleven times in the courſe of his reign. It was moreover enacted, that whatever ſhould be done contrary to it, ſhould be null and void; that it ſhould be read twice a year in all Cathedrals; and that the penalty of excommunication ſhould be denounced againſt any one who ſhould preſume to violate it (*b*).

(*a*) France had indeed alſo her aſſemblies of the General Eſtates of the Kingdom, in the ſame manner as England had her Parliament; but then it was only the Deputies of the Towns within the particular domain of the Crown, that is, for a very ſmall part of the Nation, who, under the name of the *Third Eſtate*, were admitted in thoſe Eſtates; and it is eaſy to conceive that they acquired no great influence in an aſſembly of Sovereigns who gave the law to their Lord Paramount. Hence, when theſe diſappeared, the maxim became immediately eſtabliſhed, *The will of the King is the will of the Law.* In old French, *Qui veut le Roy, ſi veut la Loy.*

(*b*) Confirmationes Chartarum, cap. 2, 3, 4.

At length he converted into an eſtabliſhed law a privilege of which the Engliſh had hitherto had only a precarious enjoyment; and in the ſtatute *de Tallagio non concedendo*, he decreed, that no tax ſhould be laid, nor impoſt levied, without the joint conſent of the Lords and Commons (*a*). A moſt important Statute this, which, in conjunction with Magna Charta, forms the baſis of the Engliſh Conſtitution. If from the latter the Engliſh are to date the origin of their liberty, from the former they are to date the eſtabliſhment of it; and as the Great Charter was the bulwark that protected the freedom of individuals, ſo was the Statute in queſtion the engine which protected the Charter itſelf, and by the help of which the People were thenceforth to make legal conqueſts over the authority of the Crown.

This is the period at which we muſt ſtop in order to take a diſtant view, and contemplate the different proſpect which the reſt of Europe then preſented.

(*a*) "Nullum tallagium vel auxilium, per nos, vel "hæredes noſtros, in regno noſtro ponatur ſeu levetur, "ſine voluntate & aſſenſu Archiepiſcoporum, Epiſcoporum, "Comitum, Baronum, Militum, Burgenſium, & aliorum "liberorum hom' de regno noſtro." Stat. an. 24 Ed. I.

The efficient caufes of flavery were daily operating and gaining ftrength. The independence of the Nobles on the one hand, the ignorance and weaknefs of the people on the other, continued to be extreme: the feudal government ftill continued to diffufe oppreffion and mifery; and fuch was the confufion of it, that it even took away all hopes of amendment.

France, ftill bleeding from the extravagance of a Nobility inceffantly engaged in groundlefs wars, either with each other, or with the King, was again defolated by the tyranny of that fame Nobility, haughtily jealous of their liberty, or rather of their anarchy (*a*). The people, oppreffed by thofe who ought to have guided and protected them, loaded with infults by thofe who exifted by their labour, revolted on all fides. But their tumultuous infurrections had fcarcely any other object than that of giving vent to

(*a*) Not contented with oppreffion, they added infult. "When the Gentility," fays Mezeray, "pillaged and "committed exactions on the peafantry, they called the "poor fufferer, in derifion, *Jaques bonhomme* (Goodman "James). This gave rife to a furious fedition, which "was called the *Jaquerie*. It began at Beauvais in the year "1357, extending itfelf into moft of the Provinces of "France, and was not appeafed but by the deftruction of "part of thofe unhappy victims, thoufands of whom were "flaughtered."

the anguiſh with which their hearts were full. They had no thoughts of entering into a general combination, ſtill leſs of changing the form of the Government, and laying a regular plan of public liberty.

Having never extended their views beyond the fields they cultivated, they had no conception of thoſe different ranks and orders of Men, of thoſe diſtinct and oppoſite privileges and prerogatives, which are all neceſſary ingredients of a free Conſtitution. Hitherto confined to the ſame round of ruſtic employments, they little thought of that complicated fabric, which the more informed themſelves cannot but with difficulty comprehend, when, by a concurrence of favourable circumſtances, the ſtructure has at length been reared, and ſtands diſplayed to their view.

In their ſimplicity they ſaw no other remedy for the national evils than the general eſtabliſhment of the Regal power, that is, of the authority of one common uncontrouled maſter, and only longed for that time, which, while it gratified their revenge, would mitigate their ſufferings, and reduce to the ſame level both the oppreſſors and the oppreſſed.

The Nobility, on the other hand, bent ſolely on the enjoyment of a momentary independ-

ence, irrecoverably loſt the affection of the only Men who might in time ſupport them; and, equally regardleſs of the dictates of humanity and of prudence, they did not perceive the gradual and continual advances of the royal authority, which was ſoon to overwhelm them all. Already were Normandy, Anjou, Languedoc, and Touraine, re-united to the Crown; Dauphiny, Champagne, and part of Guienne were ſoon to follow: France was doomed at length to ſee the reign of Lewis the Eleventh; to ſee her General Eſtates firſt become uſeleſs, and be afterwards aboliſhed.

It was the deſtiny of Spain alſo to behold her ſeveral Kingdoms united under one Head; ſhe was fated to be in time ruled by Ferdinand and Charles the Fifth (*a*). And Ger-

(*a*) Spain was originally divided into twelve Kingdoms, beſides Principalities, which by Treaties, and eſpecially by Conqueſts, were collected into three Kingdoms; thoſe of Caſtile, Aragon and Granada. Ferdinand the Fifth, King of Aragon, married Iſabella, Queen of Caſtile; they made a joint Conqueſt of the Kingdom of Granada, and theſe three Kingdoms, thus united, deſcended, in 1516, to their grandſon Charles V. and formed the Spaniſh Monarchy. At this æra, the Kings of Spain began to be abſolute; and the States of the Kingdoms of Caſtile and Leon, "aſſembled at Toledo, in the month "of November, 1539, were the laſt in which the three "orders met, that is, the Grandees, the Eccleſiaſtics,

many, where an elective Crown prevented the *re-unions* (*a*), was indeed to acquire a few free Cities; but her people, parcelled into so many different dominions, were destined to remain subject to the arbitrary yoke of such of her different sovereigns as should be able to maintain their power and independence. In a word, the feudal tyranny which overspread the Continent, did not compensate, by any preparation of distant advantages, the present calamities it caused; nor was it to leave behind it, as it disappeared, any thing but a more regular kind of despotism.

" and the Deputies of the Towns." *See Ferrera's General History of Spain.*

(*a*) The Kingdom of France, as it stood under Hugh Capet and his next Successors, may, with a great degree of exactness, be compared with the German Empire as it exists at present, and also existed at that time: but the Imperial Crown of Germany having, through a conjunction of circumstances, continued elective, the German Emperors, though vested with more high-sounding prerogatives than even the Kings of France, laboured under very essential disadvantages: they could not pursue a plan of aggrandisement with the same steadiness as a line of hereditary Sovereigns usually do; and the right to elect them, enjoyed by the greater Princes of Germany, procured a sufficient power to these, to protect themselves, as well as the lesser Lords, against the power of the Crown.

But in England, the ſame feudal ſyſtem, after having ſuddenly broken in like a flood, had depoſited, and ſtill continued to depoſit, the noble ſeeds of the ſpirit of liberty, union, and ſober reſiſtance. So early as the times of Edward, the tide was ſeen gradually to ſubſide; the laws which protect the perſon and property of the individual, began to make their appearance; that admirable Conſtitution, the reſult of a threefold power, inſenſibly aroſe (*a*), and the eye might even then diſcover the verdant ſummits of that fortunate region that was deſtined to be the ſeat of Philoſophy and Liberty, which are inſeparable companions.

(*a*) "Now, in my opinion," ſays Philipe de Comines, in times not much poſterior to thoſe of Edward the Firſt, and with the ſimplicity of the language of his times, "among all the ſovereignties I know in the world, that in "which the public good is beſt attended to, and the leaſt vio"lence exerciſed on the people, is that of England." *Memoires de Comines*, tom. I. lib. v. chap. xix.

RAJA SERFOGI ... THE TANJORE ... MAHAL

CHAPTER III.

The Subject continued.

THE Representatives of the Nation, and of the whole Nation, were now admitted into Parliament: the great point therefore was gained, that was one day to procure them the great influence which they at present possess; and the subsequent reigns afford continual instances of its successive growth.

Under Edward the Second, the Commons began to annex petitions to the bills by which they granted subsidies: this was the dawn of their legislative authority. Under Edward the Third, they declared they would not, in future, acknowledge any law to which they had not expressly assented. Soon after this, they exerted a privilege in which consists, at this time, one of the great balances of the Constitution: they impeached, and procured to be condemned, some of the first Ministers of State. Under Henry the Fourth, they refused to grant subsidies before an answer had been given to their petitions. In a word, every event of any consequence was attended with an increase of the

power of the Commons; increases indeed but slow and gradual, but which were peaceably and legally effected, and were the more fit to engage the attention of the People, and coalesce with the ancient principles of the Constitution.

Under Henry the Fifth, the Nation was entirely taken up with its wars against France; and in the Reign of Henry the Sixth began the fatal contests between the houses of York and Lancaster. The noise of arms alone was now to be heard: during the silence of the laws already in being, no thought was had of enacting new ones; and for thirty years together, England presents a wide scene of slaughter and desolation.

At length under Henry the Seventh, who, by his intermarriage with the house of York, united the pretensions of the two families, a general peace was re-established, and the prospect of happier days seemed to open on the Nation. But the long and violent agitation under which it had laboured, was to be followed by a long and painful recovery. Henry mounting the throne with sword in hand, and in great measure as a conqueror, had promises to fulfil, as well as injuries to avenge. In the mean time, the People, wearied out by the calamities they had undergone, and longing only

for repoſe, abhorred even the idea of reſiſtance; ſo that the remains of an almoſt exterminated Nobility beheld themſelves left defenceleſs, and abandoned to the mercy of the Sovereign.

The Commons, on the other hand, accuſtomed to act only a ſecond part in public affairs, and finding themſelves bereft of thoſe who had hitherto been their Leaders, were more than ever afraid to form, of themſelves, an oppoſition. Placed immediately, as well as the Lords, under the eye of the king, they beheld themſelves expoſed to the ſame dangers. Like them, therefore, they purchaſed their perſonal ſecurity at the expence of public liberty; and in reading the hiſtory of the two firſt Kings of the houſe of Tudor, we imagine ourſelves reading the relation given by Tacitus, of Tiberius and the Roman Senate (*a*).

The time, therefore, ſeemed to be arrived, at which England muſt ſubmit, in its turn, to the fate of the other Nations of Europe. All thoſe barriers which it had raiſed for the defence of its liberty, ſeemed to have only been able to poſtpone the inevitable effects of Power.

(*a*) *Quanto quis illuſtrior, tanto magis falſi ac feſtinantes.*

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But the remembrance of their ancient laws, of that great charter ſo often and ſo ſolemnly confirmed, was too deeply impreſſed on the minds of the Engliſh, to be effaced by tranſitory evils. Like a deep and extenſive ocean, which preſerves an equability of temperature amidſt all the viciſſitudes of ſeaſons, England ſtill retained thoſe principles of liberty which were ſo univerſally diffuſed through all orders of the People, and they required only a proper opportunity to manifeſt themſelves.

England, beſides, ſtill continued to poſſeſs the immenſe advantage of being one undivided State.

Had it been, like France, divided into ſeveral diſtinct dominions, it would alſo have had ſeveral National Aſſemblies. Theſe Aſſemblies, being convened at different times and places, for this and other reaſons, never could have acted in concert; and the power of withholding ſubſidies, a power ſo important when it is that of diſabling the Sovereign and binding him down to inaction, would then have only been the deſtructive privilege of irritating a Maſter who would have eaſily found means to obtain ſupplies from other quarters.

The different Parliaments or Aſſemblies of theſe ſeveral States, having thenceforth no

means of recommending themſelves to their Sovereign but their forwardneſs in complying with his demands, would have vied with each other in granting what it would not only have been fruitleſs, but even highly dangerous, to refuſe. The King would not have failed ſoon to demand, as a tribute, a gift he muſt have been confident to obtain, and the outward form of conſent would have been left to the People only as an additional means of oppreſſing them without danger.

But the King of England continued, even in the time of the Tudors, to have but one Aſſembly before which he could lay his wants, and apply for relief. How great ſoever the increaſe of his power was, a ſingle Parliament alone could furniſh him with the means of exerciſing it: and whether it was that the members of this Parliament entertained a deep ſenſe of their advantages, or whether private intereſt exerted itſelf in aid of patriotiſm, they at all times vindicated the right of granting, or rather refuſing ſubſidies; and, amidſt the general wreck of every thing they ought to have held dear, they at leaſt clung obſtinately to the plank which was deſtined to prove the inſtrument of their preſervation.

Under Edward the Sixth, the abſurd tyrannical laws againſt High Treaſon, inſtituted under Henry the Eighth, his predeceſſor, were aboliſhed. But this young and virtuous prince having ſoon paſſed away, the blood-thirſty Mary aſtoniſhed the world with cruelties, which nothing but the fanaticiſm of a part of her ſubjects could have enabled her to execute.

Under the long and brilliant reign of Elizabeth, England began to breathe anew: and the Proteſtant religion, being ſeated once more on the throne, brought with it ſome more freedom and toleration.

The Star-Chamber, that effectual inſtrument of the tyranny of the two Henries, yet continued to ſubſiſt; the inquiſitorial tribunal of the High Commiſſion was even inſtituted; and the yoke of arbitrary power lay ſtill heavy on the ſubject. But the general affection of the people for a Queen whoſe former misfortunes had created ſuch a general concern, the imminent dangers which England eſcaped, and the extreme glory attending that reign, leſſened the ſenſe of ſuch exertions of authority as would, in theſe days, appear the height of Tyranny, and ſerved at that time to juſtify, as they ſtill do excuſe, a Princeſs

whoſe great talents, though not her principles of government, render her worthy of being ranked among the greateſt Sovereigns.

Under the reign of the Stuarts, the Nation began to recover from its long lethargy. James the Firſt, a prince rather imprudent than tyrannical, drew back the veil which had hitherto diſguiſed ſo many uſurpations, and made an oſtentatious diſplay of what his predeceſſors had been contented to enjoy.

He was inceſſantly aſſerting, that the authority of Kings was not to be controuled, any more than that of God himſelf. Like Him, they were omnipotent; and thoſe privileges to which the People ſo clamorouſly laid claim, as their inheritance and birthright, were no more than an effect of the grace and toleration of his royal anceſtors (*a*).

Thoſe principles, hitherto only ſilently adopted in the Cabinet, and in the Courts of Juſtice, had maintained their ground in conſequence of this very obſcurity. Being now announced from the Throne, and reſounded from the pulpit, they ſpread an univerſal alarm.

(*a*) See his declaration made in Parliament in the year 1610 and 1621.

ORE MAHARAJA

Commerce, beſides, with its attendant arts, and above all that of printing, diffuſed more ſalutary notions throughout all orders of the people; a new light began to riſe upon the Nation; and the ſpirit of oppoſition frequently diſplayed itſelf in this reign, to which the Engliſh Monarchs had not, for a long time paſt, been accuſtomed.

But the ſtorm, which was only gathering in clouds during the reign of James, began to mutter under Charles the Firſt, his ſucceſſor; and the ſcene which opened to view, on the acceſſion of that prince, preſented the moſt formidable aſpect.

The notions of religion, by a ſingular concurrence, united with the love of liberty: the ſame ſpirit which had made an attack on the eſtabliſhed faith, now directed itſelf to politics: the royal prerogatives were brought under the ſame examination as the doctrines of the Church of Rome had been ſubmitted to; and as a ſuperſtitious religion had proved unable to ſupport the teſt, ſo neither could an authority pretended unlimited, be expected to bear it.

The Commons, on the other hand, were recovering from the aſtoniſhment into which

the extinction of the power of the Nobles had, at firſt, thrown them. Taking a view of the ſtate of the Nation, and of their own, they became ſenſible of their whole ſtrength; they determined to make uſe of it, and to repreſs a power which ſeemed, for ſo long a time, to have levelled every barrier. Finding among themſelves Men of the greateſt capacity, they undertook that important taſk with method and by conſtitutional means: and thus had Charles to cope with a whole Nation put in motion and directed by an aſſembly of Stateſmen.

And here we muſt obſerve how different were the effects produced in England, by the annihilation of the power of the Nobility, from thoſe which the ſame event had produced in France.

In France, where, in conſequence of the diviſion of the People and of the exorbitant power of the Nobles, the People were accounted nothing, when the Nobles themſelves were ſuppreſſed, the work was completed.

In England, on the contrary, where the Nobles ever vindicated the rights of the People equally with their own,—in England, where the People had ſucceſſively acquired

moſt effectual means of influencing the motions of the Government, and above all were undivided, when the Nobles themſelves were caſt to the ground, the body of the People ſtood firm, and maintained the public liberty.

The unfortunate Charles, however, was totally ignorant of the dangers which ſurrounded him. Seduced by the example of the other Sovereigns of Europe, he was not aware how different, in reality, his ſituation was from theirs: he had the imprudence to exert with rigour an authority which he had no ultimate reſources to ſupport: an union was at laſt effected in the Nation; and he ſaw his enervated prerogatives diſſipated with a breath (*a*). By the famous act, called the Petition of

(*a*) It might here be objected, that when, under Charles the Firſt, the regal power was obliged to ſubmit to the power of the People, the king poſſeſſed other dominions beſides England, viz. Scotland and Ireland, and therefore ſeeming to enjoy the ſame advantage as the Kings of France, that of reigning over a divided Empire or Nation. But, to this it is to be anſwered, that, at the time we mention, Ireland, ſcarcely civilized, only increaſed the neceſſities, and conſequently the dependence, of the King: while Scotland, through

Right, and another poſterior Act, to both which he aſſented, the compulſory loans and taxes, diſguiſed under the name of *Benevolences*, were declared to be contrary to law; arbitrary impriſonments, and the exerciſe of the martial law, were aboliſhed; the Court of High Commiſſion, and the Star-Chamber, were ſuppreſſed (*a*); and the Conſtitution, freed from the apparatus of deſpotic powers with which

the conjunction of peculiar circumſtances, had thrown off her obedience. And though thoſe two States, even at preſent, bear no proportion to the compact body of the Kingdom of England, and ſeem never to have been able, by their union with it, to procure to the King any dangerous reſources, yet, the circumſtances which took place in both at the time of the Revolution, or ſince, ſufficiently prove that it was no unfavourable circumſtance to Engliſh liberty, that the great criſis of the reign of Charles the Firſt, and the great advance which the Conſtitution was to make at that time, ſhould precede the period at which the King of England might have been able to call in the aſſiſtance of two other Kingdoms.

(*a*) The Star-Chamber differed from all the other Courts of law in this: the latter were governed only by the common law, or immemorial cuſtom, and Acts of Parliament; whereas the former often admitted for law the proclamations of the King in Council, and grounded its judgments upon them. The abolition of this Tribunal, therefore, was juſtly looked upon as a great victory over regal Authority.

the Tudors had obſcured it, was reſtored to its ancient luſtre. Happy had been the People, if their Leaders, after having executed ſo noble a work, had contented themſelves with the glory of being the benefactors of their Country. Happy had been the King, if, obliged at laſt to ſubmit, his ſubmiſſion had been ſincere, and if he had become ſufficiently ſenſible, that the only reſource he had left was the affection of his ſubjects.

But Charles knew not how to ſurvive the loſs of a power he had conceived to be indiſputable : he could not reconcile himſelf to limitations and reſtraints ſo injurious, according to his notions, to ſovereign authority. His diſcourſe and conduct betrayed his ſecret deſigns ; diſtruſt took poſſeſſion of the Nation ; certain ambitious perſons availed themſelves of it to promote their own views ; and the ſtorm, which ſeemed to have blown over, burſt forth anew. The contending fanaticiſm of perſecuting ſects joined in the conflict between regal haughtineſs and the ambition of individuals ; the tempeſt blew from every point of the compaſs ; the Conſtitution was rent aſunder, and Charles exhibited in his fall an awful example to the Univerſe.

The royal power being thus annihilated, the Engliſh made fruitleſs attempts to ſubſtitute a republican Government in its ſtead. "It was a curious ſpectacle," ſays Monteſquieu, "to behold the vain efforts of the Engliſh to "eſtabliſh among themſelves a democracy." Subjected, at firſt, to the power of the principal Leaders in the Long Parliament, they ſaw that power expire, only to paſs, without bounds, into the hands of a Protector. They ſaw it afterwards parcelled out among the Chiefs of different bodies of troops; and thus ſhifting without end from one kind of ſubjection to another, they were at length con vinced, that an attempt to eſtabliſh liberty in a great Nation, by making the people interfere in the common buſineſs of Government, is of all attempts the moſt chimerical; that the authority *of all*, with which men are amuſed, is in reality no more than the authority of a few powerful individuals who divide the Republic among themſelves; and they at laſt reſted in the boſom of the only Conſtitution which is fit for a great State and a free People; I mean that in which a choſen number deliberate, and a ſingle hand executes; but in which, at the ſame time, the public ſatisfaction

is rendered, by the general relation and arrangement of things, a neceſſary condition of the duration of Government.

Charles the Second, therefore, was called over; and he experienced on the part of the people, that enthuſiaſm of affection which uſually attends the return from a long alienation. He could not, however, bring himſelf to forgive them the inexpiable crime of which he looked upon them to have been guilty. He ſaw with the deepeſt concern that they ſtill entertained their former notions with regard to the nature of the royal prerogative; and, bent upon the recovery of the ancient powers of the Crown, he only waited for an opportunity to break thoſe promiſes which had procured his reſtoration.

But the very eagerneſs of his meaſures fruſtrated their ſucceſs. His dangerous alliances on the Continent, and the extravagant wars in which he involved England, joined to the frequent abuſe he made of his authority, betrayed his deſigns. The eyes of the Nation were ſoon opened, and ſaw into his projects; when, convinced at length that nothing but fixed and irreſiſtible bounds can be an effectual check on the views and efforts of Power, they reſolved

finally to take away thoſe remnants of deſpotiſm which ſtill made a part of the regal prerogative.

The military ſervices due to the Crown, the remains of the ancient feudal tenures, had been already aboliſhed: the laws againſt heretics were now repealed; the Statute for holding parliaments once at leaſt in three years was enacted; the *Habeas Corpus* act, that barrier of the Subject's perſonal ſafety, was eſtabliſhed; and, ſuch was the patriotiſm of the Parliaments, that it was under a King the moſt deſtitute of principle, that liberty received its moſt efficacious ſupports.

At length, on the death of Charles, began a reign which affords a moſt exemplary leſſon both to Kings and People. James the Second, a prince of a more rigid diſpoſition, though of a leſs comprehenſive underſtanding, than his late brother, purſued ſtill more openly the project which had already proved ſo fatal to his family. He would not ſee that the grea alterations which had ſucceſſively been effected in the Conſtitution, rendered the execution of it daily more and more inpracticable; he imprudently ſuffered himſelf to be exaſperated at a reſiſtance he was in no condition to overcome;

and, hurried away by a ſpirit of deſpotiſm and a monkiſh zeal, he ran headlong againſt the rock which was to wreck his authority.

He not only uſed, in his declarations, the alarming expreſſions of Abſolute Power and Unlimited Obedience—he not only uſurped to himſelf a right to diſpenſe with the laws; but moreover ſought to convert that deſtructive pretenſion to the deſtruction of thoſe very laws which were held moſt dear by the Nation, by endeavouring to aboliſh a religion for which they had ſuffered the greateſt calamities, in order to eſtabliſh on its ruins a mode of faith which repeated Acts of the Legiſlature had proſcribed; and proſcribed, not becauſe it tended to eſtabliſh in England the doctrines of Tranſubſtantiation and Purgatory, doctrines in themſelves of no political moment, but becauſe the unlimited power of the Sovereign had always been made one of its principal tenets.

To endeavour therefore to revive ſuch a Religion, was not only a violation of the laws, but was, by one enormous violation, to pave the way for others of a ſtill more alarming nature. Hence the Engliſh, ſeeing that their liberty was attacked even in its firſt principles, had recourſe to that remedy which reaſon and na-

ture point out to the People, when he who ought to be the guardian of the laws becomes their deſtroyer: they withdrew the allegiance which they had ſworn to James, and thought themſelves abſolved from their oath to a King who himſelf diſregarded the oath he had made to his People.

But, inſtead of a revolution like that which dethroned Charles the Firſt, which was effected by a great effuſion of blood, and threw the ſtate into a general and terrible convulſion, the dethronement of James proved a matter of ſhort and eaſy operation. In conſequence of the progreſſive information of the People, and the certainty of the principles which now directed the Nation, the whole were unanimous. All the ties by which the People were bound to the throne were broken, as it were, by one ſingle ſhock; and James, who, the moment before, was a Monarch ſurrounded by ſubjects, became at once a ſimple individual in the midſt of the Nation.

That which contributes, above all, to diſtinguiſh this event as ſingular in the annals of Mankind, is the moderation, I may even ſay, the legality which accompanied it. As if to dethrone a King who ſought to ſet himſelf

above the Laws, had been a natural confequence of, and provided for, by the principles of Government, every thing remained in its place; the Throne was declared vacant, and a new line of fucceffion was eftablifhed.

Nor was this all; care was had to repair the breaches that had been made in the Conftitution, as well as to prevent new ones; and advantage was taken of the rare opportunity of entering into an original and exprefs compact between King and People.

An Oath was required of the new King more precife than had been taken by his predeceffors; and it was confecrated as a perpetual formula of fuch oaths. It was determined, that to impofe taxes without the confent of Parliament, as well as to keep up a ftanding army in time of peace, are contrary to law. The power which the Crown had conftantly claimed, of difpenfing with the laws, was abolifhed. It was enacted, that the fubject, of whatever rank or degree, had a right to prefent petitions to the King (*a*). Laftly, the key-ftone was put to the arch, by the

(*a*) The Lords and Commons, previous to the Coronation of King William and Queen Mary, had framed a Bill which contained a declaration of the rights which they claimed in behalf of the People, and was in con-

final eſtabliſhment of the Liberty of the Preſs (*a*).

The Revolution of 1689 is therefore the third grand æra in the hiſtory of the conſtitution of England. The Great Charter had marked out the limits within which the Royal authority ought to be confined; ſome outworks were raiſed in the reign of Edward the Firſt; but it was at the Revolution that the circumvallation was completed.

It was at this æra, that the true principles of civil ſociety were fully eſtabliſhed. By the expulſion of a King who had violated his oath, the doctrine of Reſiſtance, that ultimate reſource of an oppreſſed People, was confirmed beyond a doubt. By the excluſion given to a family hereditarily deſpotic, it was finally de-

ſequence called the *Bill of Rights*. This Bill contained the Articles above, as well as ſome others, and having received afterwards the Royal aſſent, became an Act of Parliament, under the title of *An Act declaring the Rights and Liberties of the Subject, and ſettling the Succeſſion of the Crown.*— A. 1 William and Mary, Seſſ. 2. Cap. 2.

(*a*) The liberty of the preſs was, properly ſpeaking, eſtabliſhed only four years afterwards, in conſequence of the refuſal which the Parliament made at that time, to continue any longer the reſtrictions which had before been ſet upon it.

MAHARAJA SERFOJI'S SARASWATI MAHAL LIBRARY TANJORE

termined, that Nations are not the property of Kings. The principles of Paſſive Obedience, the Divine and indefeaſible Right of Kings, in a word, the whole ſcaffolding of falſe and ſuperſtitious notions, by which the Royal authority had till then been ſupported, fell to the ground, and in the room of it were ſubſtituted the more ſolid and durable foundations of the love of order, and the ſenſe of the neceſſity of civil government among Mankind.

CHAPTER IV.

Of the Legiſlative Power.

IN almoſt all the States of Europe, the will of the Prince holds the place of law; and cuſtom has ſo confounded the matter of right with the matter of fact, that their Lawyers generally repreſent the legiſlative authority as eſſentially attached to the character of King; and the plenitude of his power ſeems to them neceſſarily to flow from the very definition of his title.

The Engliſh, placed in more favourable circumſtances, have judged differently: they could not believe that the deſtiny of Mankind ought to depend on a play of words, and on ſcholaſtic ſubtilties; they have therefore annexed no other idea to the word *King*, or *Roy*, a word known alſo to their laws, than that which the Latins annexed to the word *Rex*, and the northern Nations to that of *Cyning*.

In limiting therefore the power of the King, they have acted more conſiſtently with the etymology of the word; they have acted alſo more conſiſtently with reaſon, in not leaving the laws to the diſpoſal of the perſon who is already inveſted with the public power of the State, that is, of the perſon who lies under the greateſt and moſt important temptations to ſet himſelf above them.

The baſis of the Engliſh Conſtitution, the capital principle on which all others depend, is that the Legiſlative power belongs to Parliament alone; that is to ſay, the power of eſtabliſhing laws, and of abrogating, changing, or explaining them.

The conſtituent parts of Parliament are the King, the Houſe of Lords, and the Houſe of Commons.

The Houſe of Commons, otherwiſe the Aſ-

fembly of the Reprefentatives of the Nation, is compofed of the Deputies of the different Counties, each of which fends two; of the Deputies of certain Towns, of which London, including Weftminfter and Southwark, fends eight,—other Towns, two or one; and of the Deputies of the Univerfities of Oxford and Cambridge, each of which fends two.

Laftly, fince the Act of Union, Scotland fends forty-five Deputies; who, added to thofe juft mentioned, make up the whole number of five hundred and fifty-eight. Thofe Deputies, though feparately elected, do not folely reprefent the Town or County that fends them, as is the cafe with the Deputies of the United Provinces of the Netherlands, or of the Swifs Cantons; but when they are once admitted, they reprefent the whole body of the Nation.

The qualifications required for being a Member of the Houfe of Commons, are, for reprefenting a County, to be born a fubject of Great Britain, and to be poffeffed of a landed eftate of fix hundred pounds a year; and of three hundred, for reprefenting a Town or Borough.

The qualifications required for being an elector in a County, are to be poffeffed, in that County, of a Freehold of forty fhillings

a year (*a*). With regard to electors in Towns or Boroughs, they muſt be freemen of them, a word which now ſignifies certain qualifications expreſſed in the particular Charters.

When the King has determined to aſſemble a Parliament, he ſends an order for that purpoſe to the Lord Chancellor, who, after receiving the ſame, ſends a writ under the great ſeal of England to the Sheriff of every County, directing him to take the neceſſary ſteps for the election of Members for the County, and the Towns and Boroughs contained in it. Three days after the reception of the writ, the Sheriff muſt, in his turn, ſend his precept to the Magiſtrates of the Towns and Boroughs, to order them to make their election within eight days after the reception of the precept, giving four days notice of the ſame. And the Sheriff himſelf muſt proceed to the election for the County, not ſooner than ten days after the receipt of the writ, nor later than ſixteen.

The principal precautions taken by the law, to inſure the freedom of elections, are,

(*a*) This Freehold muſt have been poſſeſſed by the elector one whole year at leaſt before the time of election, except it has devolved to him by inheritance, by marriage, by a laſt will, or by promotion to an office.

MAHARAJA ...

that any Candidate, who after the date of the writ, or even after the vacancy, ſhall have given entertainments to the electors of a place, or to any of them, in order to his being elected, ſhall be incapable of ſerving for that place in Parliament. That if any perſon gives, or promiſes to give any money, employment, or reward, to any voter, in order to influence his vote, he, as well as the voter himſelf, ſhall be condemned to pay a fine of five hundred pounds, and for ever diſqualified to vote and hold any office in any corporation; the faculty, however, being reſerved to both, of procuring their indemnity for their own offence, by diſcovering ſome other offender of the ſame kind.

It has been moreover eſtabliſhed, that no Lord of Parliament, or Lord Lieutenant of a County, has any right to interfere in the elections of members; that any officer of the exciſe, cuſtoms, &c. who ſhall preſume to intermeddle in elections, by influencing any voter to give or withhold his vote, ſhall forfeit one hundred pounds, and be diſabled to hold any office. Laſtly, all ſoldiers quartered in a place where an election is to be made, muſt move from it, at leaſt one day before the election, to the diſtance of two miles or more, and re-

turn not till one day after the election is finished.

The House of Peers, or Lords, is composed of the Lords Spiritual, who are the Archbishops of Canterbury and of York, and the twenty-four Bishops; and of the Lords Temporal, whatever may be their respective titles, such as Dukes, Marquises, Earls, &c.

Lastly, the King is the third constitutive part of Parliament: it is even he alone who can convoke it, and he alone can dissolve, or prorogue it. The effect of a dissolution is, that from that moment the Parliament completely ceases to exist; the commission given to the Members by their Constituents is at an end; and whenever a new meeting of Parliament shall happen, they must be elected anew. A prorogation is an adjournment to a time appointed by the King; till which the existence of Parliament is simply interrupted, and the function of the Deputies suspended.

When the Parliament meets, whether it be by virtue of a new summons, or whether, being composed of Members formerly elected, it meets again at the expiration of the term for which it had been prorogued, the King either goes to it in person, invested with the insignia of his dignity, or appoints proper persons to

reprefent him on that occafion, and opens the feffion by laying before the Parliament the ftate of the public affairs, and inviting them to take them into confideration. This prefence of the King, either real or reprefented, is abfolutely requifite at the firft meeting; it is it which gives life to the Legiflative Bodies, and puts them in action.

The King having concluded his declaration, withdraws. The Parliament, which is then legally intrufted with the care of the National concerns, enters upon its functions, and continues to exift till it is prorogued, or diffolved. The Houfe of Commons, and that of Peers, affemble feparately: the latter, under the prefidence of the Lord Chancellor; the former, under that of their fpeaker, and both feparately adjourn to fuch days as they refpectively think proper to appoint.

As each of the two Houfes has a negative on the propofitions made by the other, and there is, confequently, no danger of their encroaching on each other's rights, nor on thofe of the King, who has likewife his negative upon them both, any queftion judged by them conducive to the public good, without exception, may be made the fubject of their refpec-

tive deliberations. Such are, for inſtance, new limitations, or extenſions, to be given to the authority of the King; the eſtabliſhing of new laws, or making changes in thoſe already in being. Laſtly, the different kinds of public proviſions, or eſtabliſhments, the various abuſes of adminiſtration, and their remedies, become, in every Seſſion, the object of the attention of Parliament.

Here, however, an important obſervation muſt be made. All Bills for granting Money muſt have their beginning in the Houſe of Commons: the Lords cannot take this object into their conſideration but in conſequence of a bill preſented to them by the latter; and the Commons have at all times been ſo anxiouſly tenacious of this privilege, that they have never ſuffered the Lords even to make any change in the Money Bills which they have ſent to them; and the Lords are expected ſimply and ſolely either to accept or reject them.

This excepted, every Member, in each Houſe, may propoſe whatever queſtion he thinks proper. If, after being conſidered, the matter is found to deſerve attention, the perſon who made the propoſition, uſually with ſome others adjoined to him, is deſired to ſet it down in writing. If, after more complete diſcuſſions of

the ſubject, the propoſition is carried in the affirmative, it is ſent to the other Houſe, that they may, in their turn, take it into conſideration. If the other Houſe reject the Bill, it remains without any effect: if they agree to it, nothing remains wanting to its complete eſtabliſhment, but the Royal Aſſent.

When there is no buſineſs that requires immediate diſpatch, the King uſually waits till the end of the Seſſion, or at leaſt till a certain number of bills are ready for him, before he declares his royal pleaſure. When the time is come, the King goes to Parliament in the ſame ſtate with which he opened it: and while he is ſeated on the Throne, a Clerk, who has a liſt of the Bills, gives, or refuſes, as he reads the Royal Aſſent.

When the Royal Aſſent is given to a public Bill, the Clerk ſays, *le Roy le veut.* If the Bill be a private Bill, he ſays, *ſoit fait comme il eſt déſiré.* If the bill has ſubſidies for its object, he ſays, *le Roy remercie ſes loyaux Sujects, accepte leur bénévolence & auſſi le veut.* Laſtly, if the King does not think proper to aſſent to the Bill, the Clerk ſays, *le Roy s'adviſera*; which is a mild way of giving a refuſal.

It is, however, pretty ſingular, that the King of England ſhould make uſe of the French

language to declare his intentions to his Parliament. This cuſtom was introduced at the Conqueſt (*a*), and has been continued, like other matters of form, which ſometimes ſubſiſt for ages after the real ſubſtance of things has been altered; and Judge Blackſtone expreſſes himſelf, on this ſubject, in the following words: "A badge, it muſt be owned (now the only "one remaining), of Conqueſt; and which one "would wiſh to ſee fall into total oblivion, un-"leſs it be reſerved as a ſolemn memento to re-"mind us that our liberties are mortal, having "once been deſtroyed by a foreign force."

When the King has declared his different intentions, he prorogues the Parliament. Thoſe Bills which he has rejected, remain without force: thoſe to which he has aſſented, become the expreſſion of the will of the higheſt power acknowledged in England: they have the ſame binding force as the *Edits enrégiſtrés* have

(*a*) William the Conqueror added to the other changes he introduced, the abolition of the Engliſh language in all public, as well as judicial tranſactions, and ſubſtituted to it the French that was ſpoke in his time; hence the number of old French words that are met with in the ſtyle of the Engliſh laws. It was only under Edward III. that the Engliſh language began to be re-eſtabliſhed in the Courts of Juſtice.

in France (*a*), and as the *Populiſcita* had in ancient Rome: in a word, they are LAWS. And though each of the conſtituent parts of the Parliament might, at firſt, have prevented the exiſtence of thoſe laws, the united will of all the Three is now neceſſary to repeal them.

(*a*) They call in France, *Edits enrégiſtrés*, thoſe Edicts of the King which have been regiſtered in the Court of Parliament. The word Parliament does not, however, expreſs in France, as it does in England, the Aſſembly of the Eſtates of the Kingdom. The French *Parlemens* are only Courts of Juſtice: that of Paris was inſtituted in the ſame manner, and for the ſame purpoſes, as the *Aula Regis* was afterwards in England, viz. for the adminiſtration of public Juſtice, and for deciding the differences between the King and his Barons: it was in conſequence of the Judgments awarded by that Court, that the King proceeded to ſeize the dominions of thoſe Lords or Princes againſt whom a ſentence had been paſſed, and when he was able to effect this, united them to the Crown. The *Parliament* of Paris, as do the other Courts of Law, grounds its judgments upon the *Edicts* or *Ordonnances* of the King, when it has once regiſtered them. When thoſe *Ordonnances* are looked upon as grievous to the Subject, the Parliament refuſes to regiſter them: but this they do not from any pretenſion they have to a ſhare in the Legiſlative authority; they only object that they are not ſatisfied that the *Ordonnance* before them is really the will of the King, and then proceed to make remonſtrances againſt it: ſometimes the King defers to theſe; or, if he is reſolved to put an end to all oppoſition, he comes in perſon to the *Parliament*, there holds what they call *un*

THE TANJORE ... SARFOJI ... MAHAL.

CHAP. V.

Of the Executive Power.

WHEN the Parliament is prorogued or diſſolved, it ceaſes to exiſt; but its laws ſtill continue to be in force: the King remains charged with the execution of them, and is ſupplied with the neceſſary power for that purpoſe.

It is however to be obſerved, that, though in his political capacity of one of the conſtituent parts of the Parliament, that is, with regard to the ſhare allotted to him in the legiſlative authority, the King is undoubtedly Sovereign, and only needs allege his will when he gives or refuſes his aſſent to the bills preſented to him; yet, in the exerciſe of his powers of Government, he is no more than a Magiſtrate, and the laws, whether thoſe that exiſted before him, or thoſe to which, by his aſſent, he has given being, muſt direct his conduct, and bind him equally with his ſubjects.

Lit de juſtice, declares that the *Ordonnance* before them is actually his will, and orders the proper Officer to regiſter it.

The firſt prerogative of the King, in his capacity of Supreme Magiſtrate, has for its object the adminiſtration of Juſtice.

1°. He is the ſource of all judicial power in the State; he is the Chief of all the Courts of Law, and the Judges are only his Subſtitutes; every thing is tranſacted in his name; the Judgments muſt be with his Seal, and are executed by his Officers.

2°. By a fiction of the law, he is looked upon as the univerſal proprietor of the kingdom; he is in conſequence deemed directly concerned in all offences; and for that reaſon proſecutions are to be carried on, in his name, in the Courts of law.

3°. He can pardon offences, that is, remit the puniſhment that has been awarded in conſequence of his proſecution.

II. The ſecond prerogative of the King, is, to be the *fountain of honour*, that is, the diſtributor of titles and dignities: he creates the Peers of the realm, as well as beſtows the different degrees of inferior Nobility. He moreover diſpoſes of the different offices, either in the Courts of law, or elſewhere.

III. The King is the ſuperintendent of Commerce; he has the prerogative of regulating weights and meaſures; he alone can coin money, and can give a currency to foreign coin.

IV. He is the Supreme Head of the Church. In this capacity he appoints the Biſhops, and the two Archbiſhops; and he alone can convene the Aſſembly of the Clergy. This Aſſembly is formed, in England, on the model of the Parliament: the Biſhops form the upper Houſe; Deputies from the Dioceſes, and from the ſeveral Chapters, form the lower Houſe: the aſſent of the King is likewiſe neceſſary to the validity of their Acts, or Canons; and the King can prorogue, or diſſolve, the Convocation.

V. He is, in right of his Crown, the Generaliſſimo of all ſea or land forces whatever; he alone can levy troops, equip fleets, build fortreſſes, and fill all the poſts in them.

VI. He is, with regard to foreign Nations, the repreſentative and the depoſitory of all the power and collective majeſty of the Nation: he ſends and receives ambaſſadors; he contracts alliances; and has the prerogative of declaring war, and of making peace, on whatever conditions he thinks proper.

VII. In fine, what ſeems to carry ſo many powers to the height, is, its being a fundamental maxim, that THE KING CAN DO NO WRONG: which does not ſignify, however, that the King has not the power of doing ill, or, as it was pretended by certain perſons in former

times, that every thing he did was lawful; but only that he is above the reach of all Courts of law whatever, and that his perſon is ſacred and inviolable.

CHAP. VI.

The Boundaries which the Conſtitution has ſet to the Royal Prerogative.

IN reading the foregoing enumeration of the powers with which the laws of England have intruſted the King, we are at a loſs to reconcile them with the idea of a Monarchy, which, we are told, is limited. The King not only unites in himſelf all the branches of the Executive power,—he not only diſpoſes, without controul, of the whole military power in the State,—but he is moreover, it ſeems, Maſter of the Law itſelf, ſince he calls up, and diſmiſſes, at his will, the Legiſlative Bodies. We find him, therefore, at firſt ſight, inveſted with all the prerogatives that ever were claimed by the moſt abſolute Monarchs; and we are at a loſs to find that liberty which the Engliſh ſeem ſo confident they poſſeſs.

But the Repreſentatives of the people ſtill have, and that is ſaying enough, they ſtill have in their hands, now that the Conſtitution is

fully eſtabliſhed, the ſame powerful weapon which has enabled their anceſtors to eſtabliſh it. It is ſtill from their liberality alone that the King can obtain ſubſidies; and in theſe days, when every thing is rated by pecuniary eſtimation, when gold is become the great moving ſpring of affairs, it may be ſafely affirmed, that he who depends on the will of other men, with regard to ſo important an article, is, whatever his power may be in other reſpects, in a ſtate of real dependence.

This is the caſe of the King of England. He has, in that capacity, and without the grant of his people, ſcarcely any revenue. A few hereditary duties on the exportation of wool, which (ſince the eſtabliſhment of manufactures) are become tacitly extinguiſhed; a branch of the exciſe, which, under Charles the Second, was annexed to the Crown as an indemnification for the military ſervices it gave up, and which, under George the Firſt, has been fixed to ſeven thouſand pounds; a duty of two ſhillings on every ton of wine imported; the wrecks of ſhips of which the owners remain unknown; whales and ſturgeons thrown on the coaſt; ſwans ſwimming on public rivers; and a few other feudal relics, now compoſe the whole appropriated revenue of the King, and

are all that remain of the ancient inheritance of the Crown.

The King of England, therefore, has the prerogative of commanding armies, and equipping fleets—but without the concurrence of his Parliament he cannot maintain them. He can beſtow places and employments—but without his Parliament he cannot pay the ſalaries attending on them. He can declare war—but without his Parliament it is impoſſible for him to carry it on. In a word, the Royal Prerogative, deſtitute as it is of the power of impoſing taxes, is like a vaſt body, which cannot of itſelf accompliſh its motions: or, if you pleaſe, it is like a ſhip completely equipped, but from which the Parliament can at pleaſure draw off the water, and leave it aground,—and alſo ſet it afloat again, by granting ſubſidies.

And indeed we ſee, that, ſince the eſtabliſhment of this right of the Repreſentatives of the People, to grant, or refuſe, ſubſidies to the Crown, their other privileges have been continually increaſing. Though theſe Repreſentatives were not, in the beginning, admitted into Parliament but upon the moſt diſadvantageous terms, yet they ſoon found means, by joining petitions to their money-bills, to have a ſhare in framing thoſe laws by which they

were in future to be governed; and this method of proceeding, which at firſt was only tolerated by the King, they afterwards converted into an expreſs right, by declaring, under Henry the Fourth, that they would not, thenceforward, come to any reſolutions with regard to ſubſidies, before the King had given a preciſe anſwer to their petitions.

In ſubſequent times we ſee the Commons conſtantly ſucceſsful, by their exertions of the ſame privilege, in their endeavours to lop off the deſpotic powers which ſtill made a part of the regal prerogative. Whenever abuſes of power had taken place, which they were ſeriouſly determined to correct, they made *grievances and ſupplies*, to uſe the expreſſion of Sir Thomas Wentworth, *go hand in hand together*, which always produced the redreſs of them. And in general, when a bill, in conſequence of its being judged by the Commons eſſential to the public welfare, has been joined by them to a money bill, it has ſeldom failed *to paſs in that agreeable company* (*a*).

(*a*) In mentioning the forcible uſe which the Commons have at times made of their power of granting ſubſidies, by joining proviſions of a different nature to bills that had grants for their object, I only mean to ſhew the great efficiency of that power, which was the ſubject of this Chapter, without pretending to ſay any

CHAP. VII.

The ſame Subject continued.

BUT this force of the prerogative of the Commons, and the facility with which it may be exerted, however neceſſary they may have been for the firſt eſtabliſhment of the Conſtitution, might prove too conſiderable at preſent, when it is requiſite only to ſupport it. There might be the danger, that, if the Parliament ſhould ever exert their privilege to its full extent, the Prince, reduced to deſpair, might reſort to fatal extremities; or that the Conſtitution, which ſubſiſts only by virtue of its equilibrium, might in the end be ſubverted.

Indeed this is a caſe which the prudence of Parliament has foreſeen. They have, in this reſpect, impoſed laws upon themſelves; and without touching the prerogative itſelf, they

thing as to the propriety of the meaſure. The Houſe of Lords have even found it neceſſary (which confirms what is ſaid here) to form, as it were, a confederacy among themſelves, for the ſecurity of their Legiſlative authority, againſt the unbounded uſe which the Commons might make of their power of taxation; and it has been made a ſtanding order of their Houſe, to reject any bill whatſoever to which a money-bill has been *tacked*.

have moderated the exercise of it. A custom has for a long time prevailed, at the beginning of every reign, and in the kind of overflowing of affection which takes place between a King and his first Parliament, to grant the King a revenue for his life; a provision which, with respect to the great exertions of his power, does not abridge the influence of the Commons, but yet puts him in a condition to support the dignity of the Crown, and affords him, who is the first Magistrate in the Nation, that independence which the laws insure also to those Magistrates who are particularly intrusted with the administration of Justice (*a*)

This conduct of the Parliament provides an admirable remedy for the accidental disorders of the State. For though, by the wise distribution of the powers of Government, great

(*a*) The twelve Judges.—Their commissions, which in former times were often given them *durante bene placito*, now must always "be made *quamdiu se bene gesserint*, and their "salaries ascertained: but upon an address of both Houses "it may be lawful to remove them."—Stat. 13 Will. III. c. 2. In the first year of the reign of his present Majesty, it has been moreover enacted, that the commissions of the Judges shall continue in force, notwithstanding the demise of the King; which has prevented their being dependent, with regard to their continuation in office, on the heir apparent.

MAHARAJA

uſurpations are become in a manner imprac-ticable, nevertheleſs it is impoſſible but that, in conſequence of the continual, though ſilent efforts of the Executive power to extend itſelf, abuſes will at length ſlide in. But here the powers, wiſely kept in reſerve by the Parlia-ment, afford the means of remedying them. At the end of each reign, the civil liſt, and conſequently that kind of independence which it procured, are at an end. The ſucceſſor finds a Throne, a Sceptre, and a Crown; but he finds neither power, nor even dignity; and be-fore a real poſſeſſion of all theſe things is given him, the Parliament have it in th[illegible] to take a thorough review of the State, as [illegible] as correct the ſeveral abuſes that may have crept in during the preceding reign; and thus the Conſtitution may be brought back to its firſt principles.

England, therefore, by this means, enjoys one very great advantage, one that all free States have ſought to procure for themſelves; I mean that of a periodical reformation. But the ex-pedients which Legiſlators have contrived for this purpoſe in other Countries, have always, when attempted to be carried into practice, been found to be productive of very diſadvan-tageous conſequences. Thoſe laws which were

made in Rome, to reſtore that equality which is the eſſence of a Democratical Government, were always found impracticable: the attempt alone endangered the overthrow of the Republic; and the expedient which the Florentines called *ripigliar il ſtato*, proved nowiſe happier in its conſequences. This was becauſe all thoſe different remedies were deſtroyed beforehand, by the very evils they were meant to cure; and the greater the abuſes were, the more impoſſible it was to correct them.

But the means of reformation which the Parliament of England has taken care to reſerve to itſelf, is the more effectual, as it goes leſs directly to its end. It does not oppoſe the uſurpations of prerogative, as it were, in front—it does not encounter it in the middle of its career, and in the fulleſt flight of its exertion: but it goes in ſearch of it to its ſource, and to the principle of its action. It does not endeavour forcibly to overthrow it; it only enervates its ſprings.

What increaſes ſtill more the mildneſs of the operation, is, that it is only to be applied to the uſurpations themſelves, and paſſes by, what would be far more formidable to encounter, the obſtinacy and pride of the uſurpers.

Every thing is tranſacted with a new Sovereign, who, till then, has had no ſhare in public affairs, and has taken no ſtep which he may conceive himſelf bound in honour to ſupport. In fine, they do not wreſt from him what the good of the State requires he ſhould give up: he himſelf makes the ſacrifice.

The truth of all theſe obſervations is remarkably confirmed by the events that followed the reign of the two laſt Henries. Every barrier that protected the People againſt the excurſions of Power had been broke through. The Parliament, in their terror, had even enacted that proclamations, that is the will of the King, ſhould have the force of laws (*a*): the Conſtitution ſeemed really undone. Yet, on the firſt opportunity afforded by a new reign, liberty began again to make its appearance (*b*). And when the Nation, at length recovered from its long ſupineneſs, had, at the acceſſion of Charles the Firſt, another opportunity of a change of Sovereign, that enormous maſs

(*a*) Stat. 31 Hen. VIII. chap. VIII.

(*b*) The laws concerning Treaſon, paſſed under Henry the Eighth, which Judge Blackſtone calls "an amazing "heap of wild and new-fangled treaſons," were, together with the ſtatute juſt mentioned, repealed in the beginning of the reign of Edward VI.

of abuſes, which had been accumulating, or gaining ſtrength, during five ſucceſſive reigns, was removed, and the ancient laws were reſtored.

To which add, that this ſecond reformation, which was ſo extenſive in its effects, and might be called a new creation of the Conſtitution, was accompliſhed without producing the leaſt convulſion. Charles the Firſt, in the ſame manner as Edward had done in former times (*a*), aſſented to every regulation that was paſſed; and whatever reluctance he might at firſt manifeſt, yet the Act called *the Petition of Right* (as well as the Bill which afterwards completed the work) received the Royal Sanction without bloodſhed.

It is true, great misfortunes followed; but they were the effects of particular circumſtances. During the time which preceded the reign of the Tudors, the nature and extent of regal authority having never been accurately defined, the exorbitant power of the Princes of that Houſe had gradually introduced political prejudices of even an extrava-

(*a*) Or, which is equally in point, the Duke of Somerſet his uncle, who was the Regent of the Kingdom, under the name of Protector.

MAHARAJA SERFOJI'S SARASWATI

gant kind: thoſe prejudices, having had a hundred and fifty years to take root, could not be ſhaken off but by a kind of general convulſion; the agitation continued after the action, and was carried to exceſs by the religious quarrels that aroſe at that time.

CHAPTER VIII.

New Reſtrictions.

THE Commons, however, have not entirely relied on the advantages of the great prerogative with which the Conſtitution has intruſted them.

Though this prerogative is, in a manner, out of danger of an immediate attack, they have nevertheleſs ſhewn at all times the greateſt jealouſy on its account. They never ſuffer, as we have obſerved before, a money-bill to begin any where but with themſelves; and any alteration that may be made in it, in the other Houſe, is ſure to be rejected. If the Commons had not moſt ſtrictly reſerved to themſelves the exerciſe of a prerogative on which their very exiſtence depends, the

whole might at length have ſlidden into that other body which they might have ſuffered to ſhare in it equally with them. If any other perſons beſides the Repreſentatives of the People, had a right to make an offer of the produce of the labour of the people, the executive Power would ſoon have forgot, that it only exiſts for the advantage of the public (*a*).

(*a*) As the Crown had the undiſputed prerogative of aſſenting to, and diſſenting from, what bills it thinks proper, as well as of convening, proroguing, and diſſolving, the Parliament, whenever it pleaſes, the latter have no aſſurance of having a regard paid to their Bills, or even of being allowed to aſſemble, but what may reſult from the need the Crown ſtands in of their aſſiſtance: the danger, in that reſpect, is even greater for the Commons than for the Lords, who enjoy a dignity which is hereditary, as well as inherent to their perſons, and form a permanent Body in the State; whereas the Commons completely vaniſh, whenever a diſſolution takes place: there is, therefore, no exaggeration in what has been ſaid above, that their *very being* depends on their power of granting ſubſidies to the Crown.

Moved by theſe conſiderations, and no doubt by a ſenſe of their duty towards their Conſtituents, to whom this right of taxation originally belongs, the Houſe of Commons have at all times been very careful leſt precedents ſhould be eſtabliſhed, which might, in the moſt diſtant manner, tend to weaken that right. Hence the warmth, I might ſay the reſentment, with which they have always rejected even the amendments propoſed by

Beſides, though this prerogative has of itſelf, we may ſay, an irreſiſtible efficiency, the Parliament has neglected nothing that may increaſe it, or at leaſt the facility of its exerciſe; and though they have allowed the general prerogatives of the Sovereign to remain undiſputed, they have in ſeveral caſes endeavoured to reſtrain the uſe he might make of them, by entering with him into divers expreſs and ſolemn conventions for that purpoſe (*a*).

Thus, the King is indiſputably inveſted with the excluſive right of aſſembling Parliaments:

the Lords in their Money Bills. The Lords, however, have not given up their pretenſion to make ſuch amendments; and it is only by the vigilance and conſtant predetermination of the Commons to reject all alteration whatever made in their Money Bills, without even examining them, that this pretenſion of the Lords is reduced to be an uſeleſs, and only dormant, claim. The firſt inſtance of a miſunderſtanding between the two Houſes, on that account, was in the year 1671; and the reader may ſee at length, in Vol. I. of the *Debates of the Houſe of Commons*, the reaſons that were at that time alleged on both ſides.

(*a*) Laws made to bind ſuch Powers in a State, as have no ſuperior power by which they may be legally compelled to the execution of them (for inſtance, the Crown, as circumſtanced in England), are nothing more than general conventions, or treaties, made with the Body of the People.

yet he muſt aſſemble one, at leaſt once in three years; and this obligation on the King, which was, we find, inſiſted upon by the People in very early times, has been ſince confirmed by an act paſſed in the ſixteenth year of the reign of Charles the Second.

Moreover, as the moſt fatal conſequences might enſue, if laws which might moſt materially affect public liberty, could be enacted in Parliaments abruptly and imperfectly ſummoned, it has been eſtabliſhed that the Writs for aſſembling a Parliament muſt be iſſued forty days at leaſt before the firſt meeting of it. Upon the ſame principle it has alſo been enacted, that the King cannot abridge the term he has once fixed for a prorogation, except in the two following caſes, viz. of a rebellion, or of imminent danger of a foreign invaſion; in both which caſes a fourteen days notice muſt be given (*a*).

Again, the King is the head of the Church; but he can neither alter the eſtabliſhed religion, or call individuals to an account for their religious opinions (*b*). He cannot even

(*a*) Stat. 30 Geo. II. c. 25.

(*b*) The Convocation, or aſſembly of the Clergy, of which the King is the head, can only regulate ſuch affairs

profeſs the religion which the Legiſlature has particularly forbidden; and the Prince who ſhould profeſs it, is declared incapable of *inheriting, poſſeſſing, or enjoying, the Crown of theſe Kingdoms* (*a*).

The King is the firſt Magiſtrate; but he can make no change in the maxims and forms conſecrated by law or cuſtom: he cannot even influence, in any caſe whatever, the deciſion of cauſes between ſubject and ſubject; and James the Firſt, aſſiſting at the trial of a cauſe, was reminded by the Judge, that he could deliver no opinion (*b*). Laſtly, though crimes are proſecuted in his name, he cannot refuſe to lend it to any particular perſons who have complaints to prefer.

as are merely eccleſiaſtical; they cannot touch the Laws, Cuſtoms, and Statutes, of the Kingdom.—Stat. 25 Hen. VIII. c. 19.

(*a*) 1 Will. and M. Stat. 2. c. 2.

(*b*) Theſe principles have ſince been made an expreſs article of an Act of Parliament; the ſame which aboliſhed the Star-Chamber. "Be it likewiſe declared and enacted, "by the authority of this preſent Parliament, That "neither his Majeſty, nor his Privy Council, have, or "ought to have any juriſdiction, power, or authority, to "examine or draw into queſtion, determine, or diſpoſe of "the lands, tenements, goods, or chattels, of any of the "ſubjects of this Kingdom."—Stat. A. 16. Ch. I. cap. 10. § 10.

The King has the privilege of coining money; but he cannot alter the ſtandard.

The King has the power of pardoning offenders; but he cannot exempt them from making a compenſation to the parties injured. It is even eſtabliſhed by law, that, in a caſe of murder, the widow, or next heir, ſhall have a right to proſecute the murderer; and the King's pardon, whether it preceded the Sentence paſſed in conſequence of ſuch proſecution, or whether it be granted after it, cannot have any effect (*a*).

The King has the military power; but ſtill with reſpect to this, he is not abſolute. It is true, in regard to the ſea-forces, as there is in them this very great advantage, that they cannot be turned againſt the liberty of the Nation, at the ſame time that they are the ſureſt bulwark of the iſland, the King may keep them as he thinks proper; and in this reſpect he lies only under the general reſtraint of applying to Parliament for obtaining the means of doing it. But in regard to land forces, as they may become an immediate

(*a*) The method of proſecution mentioned here, is called an *Appeal*; it muſt be ſued within a year and a day after the completion of the crime.

TANJORE MAHARAJA SERFOJI'S SARASWATI

weapon in the hands of Power, for throwing down all the barriers of public liberty, the King cannot raife them without the confent of Parliament. The Guards of Charles the Second were declared anti-conftitutional (*a*); and James's army was one of the caufes of his being dethroned (*b*).

In thefe times, however, when it is become a cuftom with Princes to keep thofe numerous armies which ferve as a pretext and means of oppreffing the People, a State that would maintain its independence, is obliged, in a great meafure, to do the fame. The Parliament has therefore thought proper to eftablifh a ftanding body of troops, which amounts to about thirty thoufand Men, of which the King has the command.

But this army is only eftablifhed for one year; at the end of that term, it is (unlefs re-eftablifhed) to be *ipfo facto* difbanded; and as the queftion which then lies before Parlia-

(*a*) He had carried them to the number of four thoufand men.

(*b*) A new fanction has been given to the above reftriction in the fixth Article of the Bill of Rights: "A ftanding army, without the confent of Parliament, is againft law."

ment, is not, whether the army *ſhall be diſſolved*, but whether it ſhall be *eſtabliſhed anew*, as if it had never exiſted, any one of the three branches of the Legiſlature may, by its diſſent, hinder its continuance.

Beſides, the funds for the payment of this body of troops are to be raiſed by taxes that never are eſtabliſhed for more than one year (*a*); and it becomes likewiſe neceſſary, at the end of this term, again to eſtabliſh them (*b*). In a word, this inſtrument of defence, which the circumſtances of modern times have cauſed to be judged neceſſary, being capable, on the other hand, of being applied to the moſt dangerous purpoſes, has been joined to the State by only a ſlender thread, the knot of which may be ſlipped, on the firſt appearance of danger (*c*).

(*a*) The land-tax and malt-tax.

(*b*) It is alſo neceſſary that the Parliament, when they renew the Act called the *Mutiny Act*, ſhould authoriſe the different Courts Martial to puniſh military offences, and deſertion. It can therefore refuſe the King even the neceſſary power of military diſcipline.

(*c*) To theſe laws, or rather conventions, between King and People, I ſhall add here the Oath which the King takes at his Coronation; a compact which, if it cannot have the ſame preciſion as the laws we have related above, yet in a manner comprehends them all, and has the farther advantage of being declared with more ſolemnity.

But theſe laws which limit the King's authority, would not, of themſelves, have been ſufficient. As they are, after all, only intellectual barriers, which it is poſſible that the King might not at all times reſpect, as the check which the Commons have on his proceedings, by a refuſal of ſubſidies, affects too much the whole State, to be exerted on every particular abuſe of his power; and laſtly, as

" *The archbiſhop or biſhop ſhall ſay,* Will you ſolemnly " promiſe and ſwear to govern the people of this Kingdom " of England, and the dominions thereto belonging, according to the Statutes of Parliament agreed on, and the laws " and cuſtoms of the ſame?—*The king or queen ſhall ſay,* I " ſolemnly promiſe ſo to do.

" *Archbiſhop or biſhop.* Will you to your power cauſe law " and juſtice, in mercy, to be executed in all your judgments? " —*King or queen.* I will.

" *Archbiſhop or biſhop.* Will you to the utmoſt of your " power maintain the laws of God, the true profeſſion of " the goſpel, and the proteſtant reformed religion eſtabliſhed " by the law? And will you preſerve unto the biſhops and " clergy of this realm, and to the churches committed to " their charge, all ſuch rights and privileges as by law do or " ſhall appertain unto them, or any of them?—*King or queen.* " All this I promiſe to do.

" *After this the king or queen, laying his or her hand upon* " *the holy goſpels, ſhall ſay,* The things which I have here " before promiſed I will perform and keep: ſo help me " God. *And then ſhall kiſs the book.*"

even this means might in ſome degree be eluded, either by breaking the promiſes which have procured ſubſidies, or by applying them to uſes different from thoſe for which they were appointed, the Conſtitution has beſides ſupplied the Commons with a means of immediate oppoſition to the miſconduct of Government, by giving them a right to impeach the Miniſters.

It is true, the King himſelf cannot be arraigned before Judges; becauſe, if there were any that could paſs ſentence upon him, it would be they, and not he, who muſt finally poſſeſs the executive power: but, on the other hand, the King cannot act without Miniſters; it is therefore thoſe Miniſters, that is, thoſe indiſpenſable inſtruments whom they attack.

If, for example, the public money has been employed in a manner contrary to the declared intention of thoſe who granted it, an impeachment may be brought againſt thoſe who had the management of it. If any abuſe of power is committed, or in general any thing done contrary to the public weal, they proſecute thoſe who have been either the inſtruments, or the adviſers of the meaſure (*a*).

(*a*) It was upon theſe principles that the Commons, in the beginning of this century, impeached the Earl of Oxford,

But who ſhall be the Judges to decide in ſuch a cauſe? What Tribunal will flatter itſelf, that it can give an impartial deciſion, when it ſhall ſee, appearing at its bar, the Government itſelf as the accuſed, and the Repreſentatives of the People, as the accuſers?

It is before the Houſe of Peers that the Law has directed the Commons to carry their accuſation; that is, before Judges whoſe dignity, on the one hand, renders them independent, and who, on the other, have a great honour to ſupport in that awful function where they have all the Nation for ſpectators of their conduct.

When the impeachment is brought to the Lords, they commonly order the perſon accuſed to be impriſoned. On the day appointed, the Deputies of the Houſe of Commons, with the perſon impeached, make their appearance: the impeachment is read in his preſence; Counſel are allowed him, as well as time, to prepare for his defence; and at the expiration of this term, the trial goes on from day to day, with open doors, and every thing is communicated in print to the public.

who had adviſed the Treaty of Partition, and the Lord Chancellor Somers, who had affixed the great ſeal to it.

But whatever advantage the law grants to the perſon impeached for his juſtification, it is from the intrinſic merits of his conduct that he muſt draw his arguments and proofs. It would be of no ſervice to him, in order to juſtify a criminal conduct, to allege the commands of the Sovereign; or, pleading guilty with reſpect to the meaſures imputed to him, to produce the Royal pardon (*a*). It is againſt the Adminiſtration itſelf that the impeachment is carried on; it ſhould therefore by no means interfere: the King can neither ſtop

(*a*) This point in ancient times was far from being clearly ſettled. In the year 1678, the Commons having impeached the Earl of Danby, he pleaded the King's pardon in bar to that impeachment: great altercations enſued on that ſubject, which were terminated by the diſſolution of that Parliament. It has been ſince enacted, (Stat. 12 and 13 W. III. c. 2.) "that no pardon under the great ſeal can be pleaded in bar "to an impeachment by the Houſe of Commons."

I once aſked a gentleman very learned in the laws of this Country, if the King could remit the puniſhment of a Man condemned in conſequence of an impeachment of the Houſe of Commons: he anſwered me, The Tories will tell you the King can, and the Whigs he cannot.—But it is not perhaps very material that the queſtion ſhould be decided: the great public ends are attained when a corrupt Miniſter is removed with diſgrace, and the whole Syſtem of his proceedings unveiled to the public eye.

TANJORE MAHARAJA SERFOJI'S

nor fuſpend its courſe, but is forced to behold, as an inactive ſpectator, the diſcovery of the ſhare which he may himſelf have had in the illegal proceedings of his ſervants, and to hear his own ſentence in the condemnation of his Miniſters.

An admirable expedient! which, by removing and puniſhing corrupt Miniſters, affords an immediate remedy for the evils of the State, and ſtrongly marks out the bounds within which Power ought to be confined: which takes away the ſcandal of guilt and authority united, and calms the people by a great and awful act of Juſtice: an expedient, in this reſpect eſpecially, ſo highly uſeful, that it is to the want of the like, that Machiavel attributes the ruin of his Republic.

But all theſe general precautions to ſecure the rights of the Parliament, that is, thoſe of the Nation itſelf, againſt the efforts of the executive Power, would be vain, if the Members themſelves remained perſonally expoſed to them. Being unable openly to attack, with any ſafety to itſelf, the two legiſlative bodies, and by a forcible exertion of its prerogatives, to make, as it were, a general aſſault, the executive power might, by ſubdividing the ſame prerogatives,

gain an entrance, and ſometimes by intereſt, and at others by fear, guide the general will, by influencing that of individuals.

But the laws which ſo effectually provide for the ſafety of the People, provide no leſs for that of the Members, whether of the Houſe of Peers, or that of the Commons. There are not known in England, either thoſe *Commiſſaries*, who are always ready to find thoſe guilty whom the wantonneſs of ambition points out, nor thoſe ſecret impriſonments which are, in other Countries, the uſual expedients of Government. As the forms and maxims of the Courts of Juſtice are ſtrictly preſcribed, and every individual has an invariable right to be judged according to Law, he may obey without fear the dictates of public virtue. Laſtly, what crowns all theſe precautions, is its being a fundamental maxim, "That the freedom of "ſpeech, and debates and proceedings in "Parliament, ought not to be impeached or "queſtioned in any Court or place out of Par-"liament (*a*)."

(*a*) Bill of Rights. Art. 9.

The Legiſlators, on the other hand, have not forgot that intereſt, as well as fear, may impoſe ſilence on duty. To prevent its effects, it has been enacted, that all perſons concerned in the management of any taxes created ſince 1692, commiſſioners of prizes, navy, victualling-office, &c. comptrollers of the army accounts, agents for regiments, the clerks in the different offices of the revenue, any perſons that hold any new office under the Crown, created ſince 1705, or having a penſion under the Crown, during pleaſure, or for any term of years, are incapable of being elected Members. Beſides, if any Member accepts an office under the Crown, except it be an officer in the army or navy accepting a new commiſſion, his ſeat becomes void; though ſuch Member is capable of being re-elected.

Such are the precautions hitherto taken by the Legiſlators, for preventing the undue influence of the great prerogative of diſpoſing of rewards and places: precautions which have been ſucceſſively taken, according as circumſtances have ſhewn them to be neceſſary; and which we may thence ſuppoſe are owing to cauſes powerful enough to produce

produce the eſtabliſhment of new ones, whenever circumſtances ſhall point out the neceſſity of them (*a*).

(*a*) Nothing can be a better proof of the efficacy of the cauſes that produce the liberty of the Engliſh, and which will be explained hereafter, than thoſe victories which the Parliament from time to time gains over itſelf, and in which the Members, forgetting all views of private ambition, only think of their intereſt as ſubjects.

Since this was firſt written, an excellent regulation has been made for the deciſion of controverted elections. Formerly the Houſe decided them in a very ſummary manner, and the witneſſes were not examined upon oath. But, by an Act paſſed a few years ago, the deciſion is now to be left to a Jury, or Committee, of fifteen Members, formed in the following manner. Out of the Members preſent, who muſt not be leſs than one hundred, forty-nine are drawn by lots: out of theſe, each candidate ſtrikes off one alternately, till there remain only thirteen, who, with two others, named out of the whole Houſe, one by each Candidate, are to form the Committee: in order to ſecure the neceſſary number of a hundred Members, all other buſineſs in the Houſe is to be ſuſpended, till the above operations are completed.

THE TANJORE MAHARAJA SERFOJI'S SARASWATI MAHAL.

CHAP. IX.

Of private Liberty, or the Liberty of Individuals.

WE have hitherto only treated of general liberty, that is, of the rights of the Nation as a Nation, and of its ſhare in the Government. It now remains that we ſhould treat particularly of a thing without which this general liberty, being abſolutely fruſtrated in its object, would be only a matter of oſtentation, and even could not long ſubſiſt, I mean the liberty of individuals.

Private Liberty, according to the diviſion of the Engliſh Lawyers, conſiſts, firſt, of the right of *Property*, that is, of the right of enjoying excluſively the gifts of fortune, and all the various fruits of one's induſtry. Secondly, of the right of *Perſonal Security*. Thirdly, of the *Locomotive Faculty*, taking the word Liberty in its more confined ſenſe.

Each of theſe rights, ſay again the Engliſh Lawyers, is inherent in the perſon of every Engliſhman: they are to him as an inheritance, and he cannot be deprived of them, but by virtue of a ſentence paſſed according to the

laws of the land. And, indeed, as this right of inheritance is expressed in English by one word (*birth-right*), the same as that which expresses the King's title to the Crown, it has, in times of oppression, been often opposed to him as a right, doubtless of less extent, but of a sanction equal to that of his own.

One of the principal effects of the right of Property is, that the King can take from his subjects no part of what they possess; he must wait till they themselves grant it him; and this right, which, as we have seen before, is, by its consequences, the bulwark that protects all the others, has moreover the immediate effect of preventing one of the chief causes of oppression.

In regard to the attempts to which the right of property might be exposed from one individual to another, I believe I shall have said every thing, when I have observed, that there is no Man in England who can oppose the irresistible power of the Laws, — that, as the Judges cannot be deprived of their employments but on an accusation by Parliament, the effect of interest with the Sovereign, or with those who approach his person, can scarcely influence their decisions,—that, as the Judges themselves have no power to pass sen-

tence till the matter of fact has been settled by men nominated, we may almost say, at the common choice of the parties (*a*), all private views, and consequently all respect of persons, are banished from the Courts of Justice. However, that nothing may be wanting which may help to throw light on the subject I have undertaken to treat, I shall relate, in general, what is the law in civil matters, that has taken place in England.

When the Pandects were found at Amalphi, the Clergy, who were then the only Men that were able to understand them, did not neglect that opportunity of increasing the influence they had already obtained, and caused them to be received in the greater part of Europe. England, which was destined to have a Constitution so different from that of other States, was to be farther distinguished by its rejecting the Roman laws.

Under William the Conqueror, and his immediate successors, a multitude of foreign Ecclesiastics flocked to the Court of England. Their influence over the mind of the Sovereign, which, in the other States of Europe, as

(*a*) Owing to the extensive right of challenging jurymen, which is allowed to every person brought to his trial, though not very frequently used.

they were then conftituted, might be confi-dered as matter of no great importance, was not fo in a Country where the Sovereign being all-powerful, to obtain influence over him, was to obtain power itfelf. The Englifh Nobility faw with the greateft jealoufy, Men of a condition fo different from their own, vefted with a power to the attacks of which they were immediately expofed, and thought that they would carry that power to the height, if they were ever to adopt a fyftem of laws which thofe fame men fought to introduce, and of which they would neceffarily become both the depofitaries and the interpreters.

It happened, therefore, by a fomewhat fingular conjunction of circumftances, that, to the Roman laws, brought over to England by Monks, the idea of ecclefiaftical power became affociated, in the fame manner as the idea of regal Defpotifm became afterwards annexed to the Religion of the fame Monks, when favoured by Kings who endeavoured to eftablifh an arbitrary government. The Nobility at all times rejected thefe laws, even with a degree of ill humour (*a*); and the ufurper Ste-

(*a*) The nobility, under the reign of Richard II. declared in the French language of thofe times, "Purce "que le roialme d'Engleterre n'étoit devant ces heures,

phen, whoſe intereſt it was to conciliate their affections, went ſo far as to prohibit the ſtudy of them.

As the general diſpoſition of things brought about, as hath been above obſerved, a ſufficient degree of intercourſe between the Nobility or Gentry, and the People, the averſion to the Roman Laws gradually ſpread itſelf far and wide; and thoſe laws, to which their wiſdom in many caſes, and particularly their extenſiveneſs, ought naturally to have procured admittance when the Engliſh laws themſelves were as yet but in their infancy, experienced the moſt ſteady oppoſition from the Lawyers; and as thoſe perſons who ſought to introduce them, frequently renewed their attempts, there at length aroſe a kind of general combination amongſt the Laity, to confine them to Univerſities and Monaſteries (*a*).

" ne a l'entent du Roy notre Seignior, & Seigniors du " Parlement, unques ne ſera, rulé ne governé par la ley " civil." viz. Inaſmuch as the Kingdom of England was not before this time, nor according to the intent of the King our Lord, and Lords of Parliament, ever ſhall be ruled or governed by the civil law—*In Rich. Parliamento Weſtmonaſterii, Feb.* 3. *Anno* 2.

(*a*) It might perhaps be ſhewn, if it belonged to the ſubject, that the liberty of thinking in religious matters, which has at all times remarkably prevailed in England, is owing to much the ſame cauſes as its political

This oppoſition was carried ſo far, that Forteſcue, Chief Juſtice of the King's Bench, and afterwards Chancellor under Henry VI. wrote a Book intitled *De Laudibus Legum Angliæ*, in which he propoſes to demonſtrate the ſuperiority of the Engliſh Laws over the Civil; and that nothing might be wanting in his arguments on that ſubject, he gives them the advantage of ſuperior antiquity, and traces their origin to a period much anterior to the foundation of Rome.

This ſpirit has been preſerved even to much more modern times; and when we peruſe the many paragraphs which Judge Hale has

liberty: both perhaps are owing to this, that the ſame Men, whoſe intereſt it is in other Countries that the People ſhould be influenced by prejudices of a political or religious kind, have been in England forced to inform and unite with them. I ſhall here take occaſion to obſerve, in anſwer to the reproach made to the Engliſh, by Preſident Henault, in his much eſteemed Chronological Hiſtory of France, that the frequent changes of religion which have taken place in England, do not argue any ſervile diſpoſition in the people; they only prove the equilibrium between the then exiſting Sects: there was none but what might become the prevailing one, whenever the Sovereign thought proper to declare for it; and it was not England, as people may think at firſt ſight, it was only its government, which changed its religion.

MAHARAJA BEN... ...ORE

written in his Hiſtory of the Common Law, to prove, that in the few caſes in which the Civil Law is admitted in England, it can have no power by virtue of any deference due to the orders of Juſtinian (a truth which certainly had no need of proof), we plainly ſee that this Chief Juſtice, who was alſo a very great Lawyer, had, in this reſpect, retained ſomewhat of the heat of party.

Even at preſent the Engliſh Lawyers attribute the liberty they enjoy, and of which other Nations are deprived, to their having rejected, while thoſe Nations have admitted, the Roman law; which is miſtaking the effect for the cauſe. It is not becauſe the Engliſh have rejected the Roman laws that they are free; but it is becauſe they were free, or at leaſt becauſe there exiſted among them cauſes which were, in proceſs of time, to make them ſo, that they have been able to reject the Roman laws. But even though they had admitted thoſe laws, the ſame circumſtances that have enabled them to reject the whole, would have likewiſe enabled them to reject thoſe parts which might not have ſuited them; and they would have ſeen, that it is very poſſible to receive the deciſions of the civil law on the ſubject of the *ſervitutes ur-*

banæ & rusticæ, without adopting its principles with respect to the power of the Emperors (*a*).

Of this the Republic of Holland, where the Civil Law is adopted, would afford a proof, if there were not the still more striking one, of the Emperor of Germany, who, though in the opinion of his People, he is the successor to the very throne of the *Cæsars* (*b*), has not by a great deal so much power as a King of England; and the reading of the several treaties which deprived him of the power of nominating the principal offices of the Empire, sufficiently shews that a spirit of unlimited submission to Monarchical power, is no necessary consequence of the admission of the Roman Civil Law.

The Laws therefore that have taken place in England, are what they call the *Unwritten Law*, also termed the *Common Law*, and the *Statute Law*.

The *Unwritten Law* is thus called, not because it is only transmitted by tradition from generation to generation; but because it is not founded on any known act of the Legislature. It receives its force from immemorial custom, and, for the most part, derives its origin from

(*a*) What particularly frightens the English Lawyers is L. i. Lib. I. Tit. 4. Dig.—*Quod Principi placuerit legis habet vigorem.*

(*b*) The German word to express the Emperor's dignity, is, *Cæsar*, Kaiser.

Acts of Parliament enacted in the times which immediately followed the Conqueſt (particularly thoſe anterior to the time of Richard the Firſt) the originals of which are loſt.

The principal objects ſettled by the Common Law, are the rules of deſcent, the different methods of acquiring property, the various forms required for rendering contracts valid; in all which points it differs, more or leſs, from the Civil Law. Thus, by the Common Law, lands deſcend to the eldeſt ſon, to the excluſion of all his brothers and ſiſters; whereas, by the Civil Law, they are equally divided between all the children: by the Common Law, property is transferred by *writing*; but by the Civil Law, *tradition*, or actual delivery, is moreover requiſite, &c.

The ſource from which the deciſions of the Common Law are drawn, is what is called *præteritorum memoria eventorum*, and is found in the collection of judgments that have been paſſed from time immemorial, and which, as well as the proceedings relative to them, are carefully preſerved under the title of *Records*. In order that the principles eſtabliſhed by ſuch a ſeries of judgments may be known, extracts from them are, from time to time, publiſhed under the name of *Reports*; and theſe re-

ports reach, by a regular ſeries, ſo far back as the reign of Edward the Second, incluſively.

Beſides this collection, which is pretty voluminous, there are alſo ſome ancient Authors of great authority among Lawyers; ſuch as *Glanvil*, who wrote under the reign of Henry the Second—*Bracton*, who wrote under Henry the Third—*Fleta*, and *Lyttelton*. Among more modern Authors, is Sir Edward Coke, Lord Chief Juſtice of the King's Bench under James the Firſt, who has written four books of Inſtitutes, and is at preſent the Oracle of the Common Law.

The Common Law moreover comprehends ſome particular cuſtoms, which are fragments of the ancient Saxon laws, eſcaped from the diſaſter of the Conqueſt; ſuch as that called *Gavelkind*, in the County of Kent, by which lands are divided equally between the Sons; and that called *Borough Engliſh*, by which, in ſome particular diſtricts, lands deſcend to the youngeſt Son.

The Civil Law, in the few inſtances where it is admitted, is likewiſe comprehended under the Unwritten Law, becauſe it is of force only ſo far as it has been authoriſed by immemorial cuſtom. Some of its principles are fol-

lowed in the Ecclesiastical Courts, in the Courts of Admiralty, and in the Courts of the two Universities; but it is there nothing more than *lex sub lege graviori*; and these different Courts must conform to Acts of Parliament, and to the sense given to them by the Courts of Common Law; being moreover subjected to the controul of these latter.

Lastly, the Written Law is the collection of the various Acts of Parliament, the originals of which are carefully preserved, especially since the reign of Edward the Third. Without entering into the distinctions made by Lawyers with respect to them, such as *public* and *private* Acts, *declaratory* Acts, or such as are made to extend or restrain the Common Law, it will be sufficient to observe, that being the result of the united wills of the Three Constituent Parts of the Legislature, they, in all cases, supersede both the Common Law and all former Statutes, and the Judges must take cognizance of them, and decide in conformity to them, even though they had not been alleged by the parties (*a*).

The different Courts for the Administration of Justice, in England, are,

(*a*) Unless they be private Acts.

I. The Court of *Common Pleas*. It formerly made a part of the *Aula Regis*; but as this latter Court was bound by its inſtitution always to follow the perſon of the King, and private individuals experienced great difficulties in obtaining relief from a Court that was ambulatory, and always in motion, it was made one of the articles of the Great Charter, that the Court of Common Pleas ſhould thenceforwards be held in a fixed place (*a*); and ſince that time it has been ſeated at Weſtminſter. It is compoſed of a Lord Chief Juſtice, with three other Judges; and appeals from its judgments, uſually called *Writs of Errour*, are brought before the Court of King's Bench.

II. The Court of Exchequer. It was originally eſtabliſhed to determine thoſe cauſes in which the King or his ſervants, or accomptants, were concerned, and has gradually become open to all perſons. The confining the power of this Court to the above claſs of perſons, is therefore now a mere fiction; only a man muſt, for form's ſake, ſet forth in his declaration that he is debtor to the King, whether he be ſo, or no. The Court of Exchequer is

(*a*) *Communia Placita non ſequantur Curiam noſtram, ſed teneantur in aliquo loco certo.* Magna Charta, cap. 11.

composed of the Chief Baron of the Exchequer, and three other Judges.

III. The Court of King's Bench forms that part of the *Aula Regis* which continued to subsist after the dismembering of the Common Pleas. This Court enjoys the most extensive authority of all other Courts: it has the superintendence over all Corporations, and keeps the various jurisdictions in the Kingdom within their respective bounds. It takes cognizance, according to the end of its original institution, of all criminal causes, and even of many causes merely civil. It is composed of the Lord Chief Justice of the Court of King's Bench, and three other Judges. Writs of errour against the judgments passed in that Court in civil matters, are brought before the Court of the Exchequer Chamber; or, in most cases, before the House of Peers.

IV. The Court of the Exchequer Chamber. When this Court is formed by the four Barons, or Judges of the Exchequer, together with the Chancellor and Treasurer of the same, it sits as a court of Equity; a kind of institution on which some observations will be introduced in a following Chapter. When this Court is formed by the twelve Judges, to whom sometimes the Lord Chancellor is joined, its office is to

deliberate, when properly referred and applied to, and give an opinion on important and difficult caufes, before judgments are paffed upon them, in thofe Courts where the caufes are depending.

CHAP. X.

On the Law in regard to Civil Matters, that is obferved in England.

CONCERNING the manner in which Juftice is adminiftered, in civil matters, in England, and the kind of law that obtains in that refpect, the following obfervations may be made.

In the firft place, it is to be obferved, that the beginning of a civil procefs in England, and the firft ftep ufually taken in bringing an action, is the feizing by public authority the perfon againft whom that action is brought. This is done with a view to fecure fuch perfon's appearance before a judge, or at leaft make him give fureties for that purpofe. In moft of the Countries of Europe, where the forms introduced in the Roman Civil Law, in the reigns of the latter Emperors, have been imitated, a different method has been adopted

to procure a man's appearance before a Court of Juftice. The ufual practice is to have the perfon fued, fummoned to appear before the Court, by a public officer belonging to it, a week before-hand: if no regard is paid to fuch fummons twice repeated, the Plaintiff, or his Attorney, is admitted to make before the Court a formal reading of his demand, which is then granted him, and he may proceed to execution (*a*).

In this mode of proceeding, it is taken for granted, that a perfon who declines to appear before a Judge, to anfwer the demand of another, after being properly fummoned, acknowledges the juftice of fuch demand, and this fuppofition is very juft and rational. However, the above-mentioned practice of fecuring before-hand the body of a perfon fued, though not fo mild in its execution as that juft now defcribed, nor even more effectual, appears more obvious, and is more readily adopted, in thofe times when Courts of Laws begin

(*a*) A perfon againft whom a judgment of this kind has been paffed (which they call in France *un jugement par defaut*) may eafily obtain relief: but as he now in his turn becomes in a manner the Plaintiff, his deferting the caufe, in this fecond ftage of it, would leave him without remedy.

to be formed in a Nation, and rules of diſtributive juſtice to be eſtabliſhed; and it is, very likely, followed in England as a continuation of the methods that were adopted when the Engliſh laws were as yet in their infancy.

In the times we mention, when laws begin to be formed in a Country, the adminiſtration of juſtice between individuals is commonly lodged in the ſame hands which are intruſted with the public and military authority in the State. Judges inveſted with a power of this kind, like to carry on their operations with a high hand: they conſider the refuſal of a Man to appear before them, not as being barely an expedient to avoid doing that which is juſt, but as a contempt of their authority: they of courſe look upon themſelves as being bound to vindicate it; and a writ of *Capias* is ſpeedily iſſued to apprehend the refractory Defendant. A preliminary Writ, or order, of this kind, becomes in time to be uſed of courſe, and as the firſt regular ſtep of a law-ſuit; and thus, it is likely enough, has it happened that in the Engliſh Courts of law, if I am rightly informed, a Writ of *Capias* is either iſſued before the *original* Writ itſelf (which contains the ſummons of the plaintiff, and a formal delineation of his caſe), or is joined to ſuch Writ, by means

of an *ac etiam capias*, and is ſerved along with it. It may be remembered that, in England, the *Aula Regis*, at the head of which the King himſelf preſided, was originally the common Court of Juſtice for the whole Kingdom, in civil as well as criminal matters, and continued ſo till the Court of Common Pleas was in time ſeparated from it.

In Rome, where the diſtribution of civil Juſtice was at firſt lodged in the hands of the Kings, and afterwards of the Conſuls, the method of ſeizing the perſon of a man againſt whom a demand of any kind was preferred, previouſly to any judgment being paſſed againſt him, was likewiſe adopted, and continued to be followed after the inſtitution of the Prætor's Court, to whom the civil branch of the power of the Conſuls was afterwards delegated; and it laſted till very late times; that is, till the times when thoſe capital alterations were made in the Roman civil Law, during the reign of the latter Emperors, which gave it the form it now has in thoſe Codes or collections of which we are in poſſeſſion.

A very ſingular degree of violence even took place in Rome, in the method uſed to ſecure the perſons of thoſe againſt whom a legal demand was preferred. In England, the way

to ſeize upon the perſon of a man under ſuch circumſtances, is by means of a public Officer, ſupplied with a Writ or order for that purpoſe, ſuppoſed to be directed to him (or to the Sheriff his employer) from the King himſelf. But in Rome, every one became a kind of public officer in his own cauſe, to aſſert the Prætor's prerogative; and, without any oſtenſible legal licence or badge of public authority, had a right to ſeize by force the perſon of his opponent, wherever he met him. The practice was, that the Plaintiff (*Actor*) firſt ſummoned the perſon ſued (*Reum*) with a loud voice, to follow him before the Court of the Prætor (*a*). When the Defendant refuſed to obey ſuch ſummons, the Plaintiff, by means of the words *licet anteſtari*, requeſted the by-ſtanders to be witneſſes of the fact, as a remembrance of which he touched the ears of each of them; and then proceeded to ſeize the perſon of his opponent, by throwing his arms round his neck (*obtorto collo*), thus endeavouring to drag him before the Prætor. When the perſon ſued was, through age or ſickneſs, diſabled from following the Plaintiff, the latter was directed by the law of the Twelve Tables to ſupply him with a horſe (*jumentum dato*).

(*a*) *Ad Tribunal ſequere, in Ius ambula.*

The above method of proceeding was however in after-times mitigated, though very late and ſlowly. In the firſt place, it became unlawful to ſeize a man in his own houſe, as it was the abode of his domeſtic Gods. Women of good family (*Matronæ*) were in time protected from the ſeverity of the above cuſtom, and they could no longer be dragged by force before the Tribunal of the Prætor. The method of placing a ſick or aged perſon by force upon a horſe, ſeems to have been aboliſhed during the latter times of the Republic. Emancipated Sons, and freed Slaves, were afterwards reſtrained from ſummoning their Parents, or late Maſters, without having expreſsly obtained the Prætor's leave, under the penalty of fifty pieces of gold. However, ſo late as the time of Pliny, the whole mode of ſummoning, or carrying by force, before a Judge, continued in general to ſubſiſt; though, in the time of Ulpian, the neceſſity of expreſsly obtaining the Prætor's leave was extended to all caſes and perſons; and in Conſtantine's reign, the method began to be eſtabliſhed of having legal ſummonſes ſerved only by means of a public Officer appointed for that purpoſe. After that time, other changes in the former law were introduced, from which the mode of proceeding

now uſed on the continent of Europe, has been borrowed.

In England likewiſe, ſome changes, we may obſerve, have been wrought in the law and practice concerning the arreſts of ſued perſons, though as ſlowly and late as thoſe effected in the Roman Republic or Empire, if not more ſo; which evinces the great impediments of various kinds that obſtruct the improvement of laws in every Nation. So late as the reign of king George the Firſt, an Act was paſſed to prohibit the practice of previous perſonal Arreſt, in caſes of demands under two pounds ſterling; and ſince that time, thoſe Courts, juſtly called *of Conſcience*, have been eſtabliſhed, in which ſuch demands are to be ſummarily decided, and ſimple ſummonſes, without arreſt, can only be uſed. And lately, another Bill has been paſſed on the motion of Lord Beauchamp, whoſe name deſerves to be recorded, by which the like prohibition of arreſt is extended to all caſes of debt under ten pounds ſterling; a Bill the paſſing of which was of twenty, or even a hundred times, more real importance than the riſe or fall of a Favourite or a Miniſter, though it has perhaps been honoured with a leſs degree of attention by the Public.

Another peculiarity of the Engliſh Civil Law, is the great refinements, formalities, and ſtrictneſs that prevail in it. Concerning ſuch refinements, which are rather imperfections, the ſame obſervation may be made that has been introduced above in regard to the mode and frequency of civil arreſt in England; which is, that they are continuations of methods adopted when the Engliſh Law began to be formed, and are the conſequences of the ſituation in which the Engliſh placed themſelves when they rejected the ready made Code of the Roman civil Law, compiled by order of Juſtinian, which moſt nations of Europe have admitted, and rather choſe to become their own Lawmakers, and raiſe from the ground the ſtructure of their own national Civil Code; which Code, it may be obſerved, is as yet in the firſt ſtage of its formation, as the Roman Law itſelf was during the times of the Republic, and in the reigns of the firſt Emperors.

The time at which the power of adminiſtering juſtice to individuals, becomes ſeparated from the military power (an event which happens ſooner or later in different Countries) is the realær a of the origin of a regular ſyſtem of laws in a Nation. Judges being now deprived of the power of the ſword, or, which

amounts to the ſame, being obliged to borrow that power from other perſons, endeavour to find their reſources within their own Courts, and, if poſſible, to obtain ſubmiſſion to their decrees from the great regularity of their proceedings, and the reputation of the impartiality of their deciſions.

At the ſame time alſo Lawyers begin to crowd in numbers to Courts which it is no longer dangerous to approach, and add their refinements to the rules already ſet down either by the Legiſlature or the Judges. As the employing of them is, eſpecially in the beginning, matter of choice, and they fear, that, if bare common ſenſe were thought ſufficient to conduct a law-ſuit, every body might imagine he knows as much as they do, they contrive difficulties to make their aſſiſtance needful. As the true ſcience of the Law, which is no other than the knowledge of a long ſeries of former rules and precedents, cannot as yet exiſt, they endeavour to create an artificial one, to recommend themſelves by. Formal diſtinction and definitions are invented to expreſs the different kinds of claims Men may ſet up againſt one another; in which almoſt the ſame nicety is diſplayed as that uſed by Philoſophers in claſſing the different ſubjects,

or *kingdoms*, of Natural Hiſtory. Settled forms of words, under the name of *Writs*, or ſuch like, are deviſed to ſet thoſe claims forth; and, like introductory paſſes, ſerve to uſher Claimants into the Temple of Juſtice. For fear their Clients ſhould deſert them after their firſt introduction, like a ſick man who reſts contented with a ſingle viſit of the Phyſician, Lawyers contrive other ceremonies and technical forms for the farther conduct of the proceſs and the *pleadings*; and in order ſtill more ſafely to bind their Clients to their dominion, they at length obtain to make every error relating to their profeſſional regulations, whether it be a *miſnomer*, a *miſpleading*, or ſuch like tranſgreſſion, to be of as fatal a conſequence as a failure againſt the laws of ſtrict Juſtice. Upon the foundation of the above-mentioned definitions and metaphyſical diſtinctions of caſes and actions, a number of ſtrict rules of law are moreover raiſed, with which none can be acquainted but ſuch as are complete maſters of thoſe diſtinctions and definitions.

To a perſon who in a poſterior age obſerves for the firſt time ſuch refinements in the diſtribution of Juſtice, they appear very ſtrange, and even ridiculous. Yet, it muſt be confeſſed, that during the times of the firſt inſtitution of

Magiſtracies and Courts of a civil nature, ceremonies and formalities of different kinds are very uſeful to procure to ſuch Courts, both the confidence of thoſe perſons who are brought before them, and the reſpect of the Public at large; and they thereby become actual ſubſtitutes for military force, which, till then, had been the chief ſupport of Judges. Thoſe ſame forms and profeſſional regulations are moreover uſeful to give uniformity to the proceedings of the Lawyers and of the Courts of Law, and to inſure conſtancy and ſteadineſs to the rules they ſet down among themſelves. And if the whole ſyſtem of the refinements we mention continues to ſubſiſt in very remote ages, it is in a great meaſure owing (not to mention other cauſes) to their having ſo coaleſced with the eſſential parts of the Law as to make danger, or at leaſt great difficulties, to be apprehended from a ſeparation; and they may, in that reſpect, be compared with a ſcaffolding uſed in the raiſing of a houſe, which, though only intended to ſet the materials, and ſupport the builders, happens to be ſuffered for a long time afterwards to ſtand, becauſe it is thought the removing of it might endanger the building.

TANJORE MAHARAJA SERFOJI'S SARASWATI MAHAL

Very ſingular law formalities and refined practices of the kind here alluded to, had been contrived by the firſt Juriſconſults in Rome, with a view to amplify the rules ſet down in the Laws of the Twelve Tables; which being but few, and engraved on braſs, every body could know as well as they: it even was a general cuſtom to give thoſe laws to children to learn, as we are informed by Cicero.

Very accurate definitions, as well as diſtinct branches of caſes and actions, were contrived by the firſt Roman Juriſconſults; and when a Man had once made his election of that peculiar kind of *action* he choſe to purſue his claim by, it became out of his power to alter it. Settled forms of words, called *Actiones legis*, were moreover contrived, which Men muſt abſolutely uſe to ſet forth their demands. The party himſelf was to recite the appointed words before the Prætor; and ſhould he unfortunately happen to miſs or add a ſingle word, ſo as to ſeem to alter his real caſe or demand, he loſt his ſuit thereby. To this an alluſion is made by Cicero, when he ſays, "We have a civil law ſo conſtituted, that a "Man becomes non-ſuited, who has not "proceeded in the manner he ſhould have

"done (*a*)." An obſervation of the like nature is alſo to be found in Quintilian, whoſe expreſſions on the ſubject are as follow: "There "is beſides another danger; for if but one "word has been miſtaken, we are to be conſidered as having failed in every point of our "ſuit (*b*)." Similar ſolemnities and appropriated forms of words were moreover neceſſary to introduce the reciprocal anſwers and replies of the Parties, to require and accept ſureties, to produce witneſſes, &c.

Of the above *Actiones legis*, the Roman Juriſconſults and Pontiffs had carefully kept the excluſive knowledge to themſelves, as well as of thoſe days on which religion did not allow Courts of law to ſit (*c*). One Cn. Flavius, ſecretary to Appius Claudius, having happened to divulge the ſecret of thoſe momentous forms (an act for which he was afterwards preferred by the People), Juriſconſults contrived freſh ones, which they began to keep written with ſecret cyphers; but a member of their own Body again betrayed them, and the new Collection which he publiſhed, was called *Ius*

(*a*) *Ita Ius civile habemus conſtitutum, ut cauſa cadat is qui non quemadmodum oportet egerit.* De Invent. II. 19.

(*b*) *Eſt etiam periculoſum, quium ſi uno verbo ſit erratum, totâ cauſâ cecidiſſe videamur.* Inſt. Orat. III. 8. VII. 3.

(*c*) *Dies Faſti & Nefaſti.*

Ælianum, from his name, Sex. Ælius, in the ſame manner as the former collection had been called *Ius Flavianum*. However, it does not ſeem that the influence of Lawyers became much abridged by thoſe two collections: beſides written information of that ſort, practice is alſo neceſſary: and the public Collections we mention, like the many books that have been publiſhed on the Engliſh law, could hardly enable a Man to become a Lawyer, at leaſt ſufficiently ſo as to conduct a law-ſuit (*a*).

Modern Civilians have been at uncommon pains to find out and produce the ancient law *Formulæ* we mention; in which they really have had ſurpriſing ſucceſs. Old Comic Writers, ſuch as Plautus and Terence, have ſupplied them with ſeveral; the ſettled words, for inſtance, uſed to claim the property of a Slave, frequently occur in their Works (*b*).

(*a*) The Roman Juriſconſults had extended their ſkill to objects of *voluntary* juriſdiction as well as to thoſe of *contentious* juriſdiction, and had deviſed peculiar formalities, forms of words, diſtinctions and definitions, in regard to the contracting of obligations between Man and Man, in regard to ſtipulations, donations, ſpouſals, and eſpecially laſt wills, in regard to all which they had diſplayed ſurpriſing nicety, refinement, accuracy, and ſtrictneſs. The Engliſh Lawyers have not beſtowed ſo much pains on the objects of *voluntary* juriſdiction, nor any thing like it.

(*b*) The words addreſſed to the Plaintiffs by the perſon ſued, when the latter made his appearance on the day for which he had been compelled to give ſureties, were as fol-

Extremely like the above *Actiones legis* are the *Writs* uſed in the Engliſh Courts of law. Thoſe Writs are framed for, and adapted to every branch or denomination of actions, ſuch

low, and are alluded to by Plaut. *Curcul.* I. 3. v. 5. "Where art thou who haſt obliged me to give ſureties? "Where art thou who ſummoneſt me? Here I ſtand before "thee, do thyſelf ſtand before me." To which the Plaintiff made anſwer, "Here I am." The defendant replied, "What doſt thou ſay?" When the plaintiff anſwered, I ſay. . . (*Aio*) and then followed the form of words by which he choſe to expreſs his action. *Ubi tu es, qui me vadatus es? Ubi tu es qui me citaſti? Ecce ego me tibi ſiſto; tu contra & te mihi ſiſte, &c.*

If the action, for inſtance, was brought on account of goods ſtolen, the ſettled penalty or damages for which was the reſtitution of twice the value, the words to be uſed were, AIO *decem aureos mihi furto tuo abeſſe, teque eo nomine viginti aureos mihi dare oportere.* For work done, ſuch as cleaning of clothes, &c. AIO *te mihi tritici modium de quo inter nos, convenit ob polita veſtimenta tua, dare oportere.* For recovering the value of a Slave killed by another citizen. AIO *te hominem meum occidiſſe, teque mihi quantum ille hoc anno plurimi fuit dare oportere.* For damages done by a vicious animal. AIO *bovem Mævii ſervum meum, Stichum, cornu petiiſſe & occidiſſe, eoque nomine Mævium, aut ſervi æſtimationem præſtare, aut bovem mihi noxæ dare, oportere*; or AIO *urſum Mævii mihi vulnus intuliſſe, & Mævium quantum æquius melius mihi dare oportere, &c. &c.*

It may be obſerved, that the particular kind of remedy which was provided by the law for the caſe before the Court, was expreſsly pointed out in the formula, uſed by a Plaintiff; and in regard to this no miſtake was to be made. Thus, in the laſt quoted formula, the words

as *detinue, trespass, action upon the case, accompt, and covenant*, &c. the same strictness obtains in regard to them as did in regard to the Roman law *formulæ* above mentioned: there is the same danger in misapplying them, or in failing in any part of them; and to use the words of an English Law-writer on the subject, "Writs must be rightly directed, or they will "be nought. . . . In all writs, care must be "had that they be laid and formed according "to their case, and so pursued in the process "thereof (*a*)."

The same formality likewise prevails in the English *pleadings*, and conduct of the process, as obtained in the old Roman Law proceedings; and in the same manner as the Roman Jurisconsults had their *Actionis postulationes & editiones*, their *inficiationes, exceptiones, sponsiones, replicationes, duplicationes, &c.* so the English Lawyers have their *counts, bars, re-*

quantum æquius melius, shew that the Prætor was to appoint inferior Judges both to ascertain the damage done and determine finally upon the case, according to the direction he previously gave them; these words being exclusively appropriated to the kind of actions called *Arbitrariæ*, from the above-mentioned Judges or Arbitrators. In actions brought to require the execution of conventions that had no name, the convention itself was expressed in the formula; such is that which is recited above, relating to work done by the Plaintiff, &c. &c.

(*a*) Jacob's Law Dictionary. See *Writ*.

plications, rejoinders, sur-rejoinders, rebutters, sur-rebutters, &c. A scrupulous accuracy in observing certain rules, is moreover necessary in the management of those pleadings : the following are the words of an English Law-writer on the subject: " Though the art and dexterity of " pleading, was in its nature and design only " to render the fact plain and intelligible, and " to bring the matter to judgment with con- " venient certainty, it began to degenerate from " its primitive simplicity. Pleaders, yea and " Judges, having become too curious in that " respect, pleadings at length ended in a piece " of nicety and curiosity, by which the mis- " carriage of many a cause, upon small trivial " objections, has been occasioned (*a*)."

There is, however, a difference between the Roman *Actiones legis*, and the English Writs ; which is, that the former might be framed when new ones were necessary, by the Prætor or Judge of the Court, or, in some cases, by the body of the Jurisconsults themselves,— whereas *Writs*, when wanted for such new cases as may offer, can only be devised by a distinct Judge or Court, exclusively invested with such power, viz. the High Court of Chancery. The issuing of Writs already existing, for the different cases to which they belong, is also ex-

(*a*) Cunningham's Law Dictionary. See *Pleadings*.

presſly reſerved to this Court; and ſo important has its office on thoſe two points been deemed by Lawyers, that it has been called, by way of eminence, the Manufactory of Juſtice *(Officina Juſtitiæ)*. Original Writs beſides, when once framed, are not at any time to be altered, except by Parliamentary authority (*a*).

Of ſo much weight in the Engliſh law are the original delineations of caſes we mention, that no cauſe is ſuffered to be proceeded upon, unleſs they firſt appear as legal introductors to it. However important or intereſting the caſe, the Judge, till he ſees the Writ he is uſed to, or at leaſt a Writ iſſued from the right Manufactory, is both deaf and dumb. He is without

(*a*) Writs, legally iſſued, are alſo neceſſary for executing the different incidental proceedings that may take place in the courſe of a law-ſuit, ſuch as producing witneſſes, &c. The names given to the different kinds of writs, are uſually derived from the firſt Latin words by which they began when they were written in Latin, or at leaſt from ſome remarkable word in them; which gives riſe to expreſſions ſufficiently uncouth and unintelligible. Thus, a *Pone*, is a writ iſſued to oblige a perſon in certain caſes to give ſureties *(Pone per vadium,* and *ſalvos plegios)*. A writ of *Subpœna* is to oblige witneſſes, and ſometimes other claſſes of perſons, to appear before a Court. An action of *Qui tam*, is that which is brought to ſue for a proportional ſhare of a fine eſtabliſhed by ſome penal Statute, by the perſon who laid an information: the words in the writ being, *Qui tam pro Domino rege, quam pro ſeipſo in hac parte ſequitur*, &c. &c.

eyes to ſee, or ears to hear. And when a caſe of a new kind offers, for which there is as yet no Writ in being, ſhould the Lord Chancellor and Maſters in Chancery diſagree in creating one, or prove unequal to the arduous taſk, the Great National Council, that is Parliament themſelves, are in ſuch emergency expreſsly applied to: by means of their collected wiſdom, the right myſtical words are brought together: the Judge is reſtored to the free uſe of his organs of hearing and of ſpeech; and, by the creation of a new *Writ*, a new province is added to the Empire of the Courts of Law.

In fine, thoſe precious Writs, thoſe valuable Briefs (*Brevia*) as they are alſo called by way of eminence, which are the elixir and quinteſſence of the Law, have been committed to the ſpecial care of Officers appointed for that purpoſe, whoſe offices derive their names from thoſe peculiar inſtruments they reſpectively uſe for the preſervation of the depoſit with which they are intruſted; the one being called the office of the *Hamper*, and the other, of the *Small bag* (*a*).

To ſay the truth, however, the creating of a new Writ, upon any new given caſe, is mat-

(*a*) *Hanaperium* & *Parva baga*, the Hanaper Office and the Petty-bag Office: the above two Latin words, it is not improper to obſerve, do not occur in Tully's

ter of more difficulty than the generality of Readers are aware of. The very importance which is thought to be in thoſe profeſſional forms of words, renders them really important. As every thing without them is illegal in a Court of Common Law, ſo with them every thing becomes legal; that is to ſay, they empower the Court legally to determine upon every kind of ſuit to which they are made to ſerve as introductors. The creating of a new Writ, therefore, amounts in its conſequences to the framing of a new law, and a law of a general nature too: now, the creating of ſuch a law, on the firſt appearance of a new caſe, which law is afterwards to be applied to all ſuch caſes as may be ſimilar to the firſt, is really matter of difficulty; eſpecially, when men are as yet in the dark as to the beſt kind of proviſion to be made for the caſe in queſtion, or even when it is not perhaps yet known whether it be proper to make any proviſion at all. The framing of a new Writ under ſuch circumſtances, is a meaſure on which Lawyers or Judges will not very willingly either venture of themſelves, or apply to the Legiſlature for that purpoſe.

works. To the care of the Petty-bag office thoſe writs are truſted in which the King's buſineſs is concerned: and to the Hanaper office, thoſe which relate to the Subject.

Owing to the above-mentioned real difficulty in creating new Writs on the one hand, and to the abſolute neceſſity of ſuch Writs in the Courts of Common Law on the other, many new ſpecies of claims and caſes (the ariſing of which is from time to time the unavoidable conſequence of the progreſs of trade and civilization) are left unprovided for, and remain like ſo many vacant ſpaces in the Law, or rather, like ſo many inacceſſible ſpots, which the laws in being cannot reach: now this is a great imperfection in the diſtribution of Juſtice, which ſhould be open to every individual, and provide remedies for every kind of claim which Men may ſet up againſt one another.

To remedy the above inconvenience, or rather in ſome degree to palliate it, law fictions have been reſorted to, in the Engliſh Law, by which Writs, being warped from their actual meaning, are made to extend to caſes to which they in no ſhape belong.

Law fictions of the kind we mention were not unknown to the old Roman Juriſconſults; and as an inſtance of their ingenuity in that reſpect, may be mentioned that kind of action, in which a Daughter was called a Son (*a*). Several in-

(*a*) From the above inſtance it might be concluded that the Roman Juriſconſults were poſſeſſed of ſtill

ſtances might alſo be quoted of the fictitious uſe of Writs in the Engliſh Courts of Common Law. A very remarkable expedient of that ſort occurs in the method generally uſed to ſue for the payment of certain kinds of debt, before the Court of Common Pleas, ſuch, if I am not miſtaken, as a ſalary for work done, indemnity for fulfilling orders received, &c. The Writ iſſued in thoſe caſes is grounded on the ſuppoſition, that the perſon ſued has treſpaſſed on the ground of the Plaintiff, and broken by force of arms through his fences and incloſures; and under this predicament the Defendant is brought before the Court: this Writ, which has been that which Lawyers have found of moſt convenient uſe, to introduce before a Court of Common Law the kinds of claim we mention, is called in technical language a *Clauſum fregit*. ——In order to bring a perſon before the Court of King's Bench, to anſwer demands of much the ſame nature with thoſe above, a Writ, called a *Latitat*, is iſſued, in which it is taken for granted that the Defendant inſidiouſly conceals himſelf, and is lurking in

greater power than the Engliſh Parliament; for it is a fundamental principle with the Engliſh Lawyers, that Parliament can do every thing, *except* making a Woman a Man, or a Man a Woman.

ſome County, different from that in which the Court is ſitting; the expreſſions uſed in the Writ being, that "he runs up and down and "ſecretes himſelf;" though no ſuch fact is ſeriouſly meant to be advanced either by the Attorney or the Party.

The ſame principle of ſtrict adherence to certain forms long ſince eſtabliſhed, has alſo cauſed Lawyers to introduce into their proceedings, fictitious names of perſons who are ſuppoſed to diſcharge the office of ſureties; and in certain caſes, it ſeems, the name of a fictitious perſon is introduced in a Writ along with that of the principal Defendant, as being joined in a common cauſe with him. Another inſtance of the ſame high regard of Lawyers, and Judges too, for certain old forms, which makes them more unwilling to depart from ſuch forms than from the truth itſelf of facts, occurs in the above-mentioned expedient uſed to bring ordinary cauſes before the Court of Exchequer, in order to be tried there at Common Law; which is, by making a declaration that the Plaintiff is a King's debtor, though neither the Court nor the Plaintiff's Attorney lay any ſerious ſtreſs on the aſſertion (*a*).

(*a*) Another inſtance of the ſtrict adherence of the Engliſh Lawyers to their old eſtabliſhed forms in preference

CHAP. XI.

The Subject continued. The Courts of Equity.

HOWEVER, there are limits to the law fictions and ſubtilties we mention; and the remedies of the law cannot by their means be extended to all poſſible caſes that ariſe, unleſs too many abſurdities are ſuffered to be accumulated; nay, there have been inſtances in which the improper application of Writs, in the Courts of Law, has been checked by authority. In order therefore to remedy the inconveniences we mention, that is, in order to extend the adminiſtration of diſtributive Juſtice to all poſſible caſes, by freeing it from the profeſſional difficulties that have gradually grown up

even to the truth of facts, occurs in the manner of executing the very Act mentioned in this Chapter, paſſed in the reign of George I. for preventing perſonal Arreſt for debts under forty ſhillings. If the defendant, after being perſonally ſerved with a copy of the proceſs, does not appear on the appointed days, the method is to ſuppoſe that he has actually made his appearance, and the cauſe is proceeded upon according to this ſuppoſition: fictitious names of bails are alſo reſorted to.

The inhabitants of Bengal, and other Eaſt-India provinces, have been prodigiouſly ſurpriſed, it is ſaid, at the refinements, fictions, and intricacy of the Engliſh law, in regard to civil matters, which was introduced among them a few years ago; and it is certainly not to be doubted that they may have been aſtoniſhed.

in its way, a new Kind of Courts has been inſtituted in England, called *Courts of Equity*.

The generality of people, miſled by this word *Equity*, have conceived falſe notions of the office of the Courts we mention ; and it ſeems to be generally thought that the Judges who ſit in them, are only to follow the rules of natural Equity ; by which People appear to underſtand, that in a Court of Equity, the Judge may follow the dictates of his own private feelings, and ground his deciſions as he thinks proper, on the peculiar circumſtances and ſituation of thoſe perſons who make their appearance before him. Nay, Doctor Johnſon, in his abridged Dictionary, gives the following definition of the power of the Court of Chancery, conſidered as a Court of Equity : " The " Chancellor hath power to moderate and tem- " per the written law, and ſubjecteth himſelf " only to the law of nature and conſcience :" for which definition Dean Swift, and Cowell, who was a Lawyer, are quoted as authorities. Other inſtances might be produced of Lawyers who have been inaccurate in their definitions of the true offices of the Judges of Equity. And the above-named Doctor himſelf is on no ſubject a deſpicable authority.

Certainly the power of the Judges of Equity cannot be to alter, by their own private power,

the Written Law, that is, Acts of Parliament, and thus to controul the Legiſlature. Their office only conſiſts, as will be proved in the ſequel, in providing remedies for thoſe caſes for which the public good requires that remedies ſhould be provided, and in regard to which the Courts of Common Law, ſhackled by their original forms and inſtitutions, cannot procure any;—or, in other words—the Courts of Equity have a power to adminiſter Juſtice to individuals, unreſtrained, not by the Law, but by the profeſſional law difficulties which Lawyers have from time to time contrived in the Courts of Common Law, and to which the Judges of thoſe Courts have given their ſanction.

An office of the kind here mentioned, was ſoon found neceſſary in Rome, for reaſons of the ſame nature with thoſe above delineated. For is is remarkable enough, that the Body of Engliſh Lawyers, by refuſing admittance to the Code of Roman Laws, as it exiſted in the latter times of the Empire, have only ſubjected themſelves to the ſame difficulties under which the old Roman Juriſconſults laboured, during the time they were raiſing the ſtructure of thoſe ſame Laws. And it may alſo be obſerved, that the Engliſh Lawyers or Judges have fallen upon much the ſame expedients as thoſe which the Roman Juriſconſults and Prætors had adopted.

This office of a Judge of *Equity* was in time aſſumed by the Prætor in Rome, in addition to the judicial power he before poſſeſſed (*a*). At the beginning of the year for which he had been elected, the Prætor made a declaration of thoſe remedies for new difficult caſes, which he had determined to afford during the time of his Magiſtracy; in the choice of which he was no doubt directed, either by his own obſervations, while out of office, on the propriety of ſuch remedies, or by the ſuggeſtions of experienced Lawyers on the ſubject. This Declaration (*Edictum*) the Prætor produced *in albo*, as the expreſſion was. Modern Civilians have made many conjectures on the real meaning of the above words: one of their ſuppoſitions, which is as likely to be true as any other, is, that the Prætor's *Edictum*, or heads of new law remedies, were written on a whitened wall, by the ſide of his tribunal.

Among the proviſions made by the Roman Prætors in their capacity of Judges of Equity, may be mentioned thoſe which they introduced in favour of emancipated Sons and of relations by the Women's ſide (*Cognati*), in regard to the

(*a*) The Prætor thus poſſeſſed two diſtinct branches of judicial authority, in the ſame manner as the Court of Exchequer does in England, which occaſionally ſits as a Court of Common Law, and a Court of Equity.

right of inheriting. Emancipated Sons were ſuppoſed, by the Laws of the Twelve Tables, to have ceaſed to be the children of their Father, and, as a conſequence, a legal claim was denied them on the paternal inheritance: Relations by the Woman's ſide were taken no notice of, in that article of the ſame laws which treated of the right of ſucceſſion, mention being only made of relations by the Men's ſide *(Agnati)*. The former, the Prætor admitted, by the Edict *Unde Liberi*, to ſhare their Father's (or Grandfather's) inheritance along with their brothers; and the latter he put in poſſeſſion of the patrimony of a kinſman deceaſed, by means of the Edict *Unde Cognati*, when there were no relations by the Men's ſide. Theſe two kinds of inheritance were not however called *hæreditas*, but only *bonorum poſſeſſio*; theſe words being very accurately diſtinguiſhed, though the effect was in the iſſue exactly the ſame (*a*).

(*a*) As the power of Fathers, at Rome, was unbounded, and laſted as long as their life, the emancipating of Sons was a caſe that occurred frequently enough, either for the ſecurity or ſatisfaction of thoſe who engaged in any undertaking with them. The power of Fathers had been carried ſo far by the laws of Romulus, confirmed afterwards by thoſe of the Twelve Tables, that they might ſell their Sons for ſlaves as often as three times, if, after a firſt or ſecond ſale, they happened to acquire their liberty. it was only after being ſold for the third time, and then

In the ſame manner, the Laws of the Twelve Tables had provided relief only for caſes of theft; and no mention was made in them of caſes of goods taken away by force (a deed which was not looked upon in ſo odious a light at Rome as theft, which was conſidered as the peculiar guilt of ſlaves). In proceſs of time the Prætor promiſed relief to ſuch perſons as might have their goods taken from them by open force, and gave them an action for the recovery of four times the value, againſt thoſe who had committed the fact with an evil intention. *Si cui dolo malo bona rapta eſſe dicentur, ei in quadruplum* JUDICIUM DABO.

Again, neither the Law of the Twelve Tables, nor the Laws made afterwards in the Aſſemblies of the People, had provided remedies

becoming again free, that ſons could be entirely releaſed from the paternal authority. On this law-doctrine were founded the peculiar formality and method of emancipating Sons. A pair of ſcales, and ſome copper coin were firſt brought; without the preſence of theſe ingredients the whole buſineſs would have been void; and the Father then made a formal ſale of his ſon to a perſon appointed to buy him, who was immediately to free, or *manumit* him: theſe ſales and manumiſſions were repeated three times. Five witneſſes were to be preſent, beſides a Man to hold the ſcales (*Libripens*), and another (*Anteſtatus*) occaſionally to remind the witneſſes to be attentive to the buſineſs before them.

except for very few cafes of fraud. Here the Prætor likewife interfered in his capacity of Judge of Equity, though fo very late as the time of Cicero; and promifed relief to defrauded perfons, in thofe cafes in which the laws in being afforded no action. *Quæ dolo malo facta effe dicentur, fi de his rebus alia actio non erit, & jufta caufa effe videbitur,* JUDICIUM DABO *(a).* By Edicts of the fame nature, Prætors in procefs of time gave relief in certain cafes to married Women, and likewife to Minors (*Minoribus* XXV. *annis fuccurrit Prætor,* &c.) *(b)*

(*a*) At the fame time that the Prætor proffered a new Edict, he alfo made public thofe peculiar formulæ by which the execution of the fame was afterwards to be required from him. The name of that Prætor who firft produced the Edict above mentioned, was Aquilius, as we are informed by Cicero, in that elegant ftory well known to Scholars, in which he relates the kind of fraud that was put upon Canius, a Roman Knight, when he purchafed a pleafure-houfe and gardens, near Syracufe in Sicily. This account Cicero concludes with obferving that Canius was left without remedy, "as Aquilius, his Colleague "and friend, had not yet publifhed his formulæ concern-"ing fraud." *Quid enim faceret? nondum enim Aquilius, Collega & familiaris meus, protulerat de dolo malo formulas.* Off. III. 14.

(*b*) The Law Collection, or Syftem that was formed by the feries of Edicts publifhed at different times by Prætors, was called *Jus Prætorium,* and alfo *Jus Honorarium* (*not ftrictly binding*). The Laws of the Twelve Tables, together with all fuch other Laws as had at any

The Courts of Equity eſtabliſhed in England, have in like manner provided remedies for a very great number of caſes, or ſpecies of demand, for which the Courts of Common Law, cramped by their forms and peculiar law tenets, can afford none. Thus, the Courts of Equity may, in certain caſes, give actions for and againſt infants, notwithſtanding their minority—and for and againſt married Women, notwithſtanding their coverture. Married Women may even in certain caſes ſue their huſbands before a Court of Equity. Executors may be made to pay intereſt for money that lies long in their hands. Courts of Equity may appoint Commiſſioners to hear the evidence of abſent witneſſes. When other proofs fail, they may

time been paſſed in the Aſſembly of the People, were called by way of eminence, *Jus Civile.* The diſtinction was exactly of the ſame nature as that which takes place in England, between the Common and Statute Laws, and the law or practice of the Courts of Equity. The two branches of the Prætor's judicial office were very accurately diſtinguiſhed; and there was beſides, this capital difference between the remedies or actions which he gave in his capacity of Judge of Civil Law, and thoſe in his capacity of Judge of Equity, that the former, being grounded on the *Jus Civile,* were perpetual; the latter muſt be preferred within the year, and were accordingly called *Actiones annuæ,* or *Actiones prætoriæ;* in the ſame manner as the former were called *Actiones civiles,* or *Actiones perpetuæ.*

impoſe an oath on either of the Parties; or, in the like caſe of a failure of proofs, they may compel a trader to produce his books of trade. They may alſo confirm a title to land, though one has loſt his writings, &c. &c.

The power of the Courts of Equity in England, of which the Court of Chancery is the principal one, no doubt owes its origin to the power poſſeſſed by this latter, both of creating and iſſuing Writs. When new complicated caſes offered, for which a new kind of Writ was wanted, the Judges of Chancery, finding that it was neceſſary that juſtice ſhould be done, and at the ſame time being unwilling to make general and perpetual proviſions on the caſes before them by creating new Writs, commanded the appearance of both parties, in order to procure as complete information as poſſible in regard to the circumſtances attending the caſe; and then they gave a decree upon the ſame by way of experiment.

To beginnings and circumſtances like theſe the Engliſh Courts of Equity, it is not to be doubted, owe their preſent exiſtence. In our days, when ſuch ſtrict notions are entertained concerning the power of Magiſtrates and Judges, it can ſcarcely be ſuppoſed that thoſe Courts, however uſeful, could gain admittance. Nor indeed, even in the times when they were inſtituted, were their proceedings

free from oppoſition ; and afterwards, ſo late as the reign of Queen Elizabeth, it was adjudged in the caſe of *Colleſton and Gardner*, that the killing a Sequeſtrator from the Court of Chancery, in the diſcharge of his buſineſs, was no murder, which judgment could only be awarded on the ground that the Sequeſtrator's commiſſion, and conſequently the power of his Employers, were illegal (*a*). However, the authority of the Courts of Equity has in proceſs of time become ſettled ; one of the conſtituent branches of the Legiſlature even receives at preſent appeals from the decrees paſſed in thoſe Courts ; and I have no doubt that ſeveral Acts of the whole Legiſlature might be produced, in which the office of the Courts of Equity is openly acknowledged.

The kind of proceſs that has in time been eſtabliſhed in the Court of Chancery, is as follows. After a petition is received by the Court, the perſon ſued is ſerved with a writ of *Subpœna*, to command his appearance. If he does not

(*a*) When Sir Edward Coke was Lord Chief Juſtice of the King's Bench, and Lord Elleſmere Lord Chancellor, during the reign of James I. a very ſerious quarrel alſo took place between the Courts of Law, and thoſe of Equity, which is mentioned in the fourth Chapter of the third Book of Judge Blackſtone's Commentaries: a Work in which more might have been ſaid on the ſubject of the Courts of Equity.

appear, an attachment is iſſued againſt him; and if a *non inventus* is returned, that is, if he is not to be found, a proclamation goes forth againſt him; then a commiſſion of rebellion is iſſued for apprehending him, and bringing him to the Fleet priſon. If the perſon ſued ſtands farther in contempt, a Serjeant at arms is to be ſent out to take him; and if he cannot be taken, a ſequeſtration of his land may be obtained till he appears. Such is the power which the Court of Chancery, as a Court of Equity, hath gradually acquired to compel appearance before it. In regard to the execution of the Decrees it gives, it ſeems that Court has not been quite ſo ſucceſsful; at leaſt, thoſe Law-writers whoſe Works I have had an opportunity to ſee, hold it as a maxim, that the Court of Chancery cannot bind the eſtate, but only the perſon; and as a conſequence, a perſon who refuſes to ſubmit to its decree, is only to be confined to the Fleet priſon (*a*).

(*a*) The Court of Chancery was very likely the firſt inſtituted of the two Courts of Equity: as it was the Higheſt Court in the Kingdom, it was beſt able to begin the eſtabliſhment of an office, or power, which naturally gave riſe at firſt to ſo many objections. The Court of Exchequer, we may ſuppoſe, only followed the example of the Court of Chancery: in order the better to ſecure the new power it aſſumed, it even found it neceſſary to bring

On this occaſion I ſhall obſerve, that the authority of the Lord Chancellor, in England, in his capacity of a Judge of Equity, is much more narrowly limited than that which the Prætors in Rome had been able to aſſume. The Roman Prætors, we are to remark, united in themſelves the double office of deciding caſes according to the Civil Law (*Jus civile*), and to the Prætorian Law, or Law of Equity; nor did there exiſt any other Court beſides their own, that might ſerve as a check upon them: hence it happened that their proceedings in the career of Equity, were very arbitrary indeed. In the firſt place, they did not uſe to make it any very ſtrict rule to adhere to the tenor of their own Edicts, during the whole year which their office laſted; and they aſſumed a power of altering them as they thought proper. To remedy ſo capital a defect in the diſtribution of Juſtice, a law was paſſed ſo late as the year of Rome 687 (not long before Tully's time), which was called *Lex Cornelia*, from the name of C. Cornelius, a Tribune of the People, who propounded it under the Conſulſhip of C. Piſo,

out the whole ſtrength it could muſter; and both the Treaſurer and the Chancellor of the Exchequer ſit (or are ſuppoſed to ſit) in the Court of Exchequer, when it is formed as a Court of Equity.

and Man. Glabrio. By this law it was enacted, that Prætors should in future constantly decree according to their own Edicts, without altering any thing in them during the whole year of their Prætorship. Some modern Civilians produce a certain Senatusconsult to the same effect, which, they say, had been passed a hundred years before, while others are of opinion that the same is not genuine: however, supposing it to be really so, the passing of the law we mention, shews that it had not been so well attended to as it ought to have been.

Though the above mentioned arbitrary proceedings of Prætors were put a stop to, they still retained another privilege, equally hurtful; which was, that every new Prætor, on his coming into office, had it in his power to retain only what part he pleased of the Edicts of his predecessors, and to reject the remainder: from which it followed that the Prætorian Laws or Edicts, though provided for so great a number of important cases, were really in force for only one year, the time of the duration of a Prætor's office (*a*). Nor was a re-

(*a*) Those Edicts of their predecessors in office, which the New Prætors thought proper to retain, were called *Edicta Tralatitia;* those which they themselves published (as also the alterations they made in former ones) were called *Edicta Nova.* From the above mentioned

gulation made to remedy this capital defect in the Roman Jurisprudence, before the time of the Emperor Hadrian; which is another remarkable proof of the very great slowness with which useful public regulations take place in every Nation. Under the reign of the Emperor we mention, the most useful Edicts of former Prætors were by his order collected, or rather compiled into one general Edict, which was thenceforwards to be observed by all civil Judges in their decision, and was accordingly called the perpetual Edict (*perpetuum Edictum*). This Edict, though now lost, soon grew into great repute; all the Jurisconsults of those days vied with each other in writing commentaries upon it; and the Emperor himself thought it so glorious an act of his reign, to have caused the same to be framed, that he considered himself on that account as being another Numa (*a*).

power exercised by every new Prætor in turn, their Edicts were sometimes distinguished by the appellation of *Leges annuæ*, annual laws. See Orat. in Ver. 1. 42.

(*a*) Several other more extensive law compilations were framed after the perpetual Edict we mention; there having been a kind of emulation between the Roman Emperors, in regard to the improvement of the Law. At last, under the reign of Justinian, that celebrated Compilation was published, called the Code of Justinian, which, under different titles, comprises the Roman Laws, the Edicts of the Prætors, together with the

But the Courts of Equity in England, notwithſtanding the extenſive juriſdiction they have been able in proceſs of time to aſſume, never ſuperſeded the other Courts of Law. Theſe Courts ſtill continue to exiſt in the ſame manner as formerly, and have proved a laſting check on the innovations, and in general the proceedings of the Courts of Equity. And here we may remark the ſingular, and at the ſame time effectual, means of balancing each other's influence, reciprocally poſſeſſed by the Courts of the two different ſpecies. By means of its excluſive privilege both of creating and iſſuing writs, the Court of Chancery has been able to hinder the Courts of Common Law from arrogating to themſelves the cognizance of thoſe new caſes which were not provided for by any law in being, and thus dangerouſly uniting in themſelves the power of Judges of Equity with that of Judges of Common Law. On the other hand, the Courts of

reſcripts of the Emperors; and an equal ſanction was given to the whole. This was an event of much the ſame nature as that which will take place in England, whenever a coalition ſhall be effected between the Courts of Common Law and thoſe of Equity, and both ſhall thenceforwards be bound alike to frame their judgments from the whole maſs of decided caſes and precedents then exiſting, at leaſt of ſuch as it will be poſſible to bring conſiſtently together into one compilation.

Common Law are alone invested with the power of punishing (or allowing damages for) those cases of violence by which the proceedings of the Courts of Equity might be opposed; and by that means they have been able to obstruct the enterprizes of the latter, and prevent their effecting in themselves the like dangerous union of the two offices of Judges of Common Law and of Equity.

Owing to the situation of the English Courts of Equity, with respect to the Courts of Common Law, those Courts have really been kept within limits that may be called exactly defined, if the nature of their functions be considered. In the first place, they can neither touch Acts of Parliament, nor the established practice of the other Courts, much less reverse the judgments already passed in these latter, as the Roman Prætors sometimes used to do in regard to the decisions of their predecessors in office, and sometimes also in regard to their own. The Courts of Equity are even restrained from taking cognizance of any case for which the other Courts can possibly afford remedies. Nay, so strenuously have the Courts of Common Law defended the verge of their frontier, that they have prevented the Courts of Equity from using in their proceedings the

mode of Trial by a Jury; ſo that, when in a caſe already begun to be taken cognizance of by the Court of Chancery, the Parties happen to join iſſue on any particular fact (the truth or falſehood of which a Jury is to determine), the Court of Chancery is obliged to deliver up the cauſe to the Court of King's Bench, there to be finally decided (*a*). In fine, the example of the regularity of the proceedings, practiſed in the courts of Common Law, has been communicated to the Courts of Equity; and Rolls or Records are carefully kept of the pleadings, determinations, and acts of thoſe Courts, to ſerve as rules for future deciſions (*b*).

So far therefore from having it in his power "*to temper and moderate*" (that is, *to alter*) the Written Law or Statutes, a Judge of Equity, we find, cannot alter the Unwritten Law, that is to ſay, the eſtabliſhed practice of the other Courts, and the judgments grounded thereupon,—nor even can he meddle with thoſe caſes for which either the Written or Unwritten Law has already made general proviſions, and

(*a*) See Cunningham's and Jacob's Law Dictionaries, *paſſim*.

(*b*) The Maſter of the Rolls is the Keeper of thoſe records, as the title of this office expreſſes. His office in the Court of Chancery is of great importance, as he can hear and determine cauſes in the abſence of the Lord Chancellor.

of which there is a poſſibility for the ordinary Courts of Law to take cognizance.

From all the above obſervations it follows, that, of the Courts of Equity as eſtabliſhed in England, the following definition may be given; which is, that they are a kind of *inferior experimental* Legiſlature, continually employed in finding out and providing law remedies for thoſe new ſpecies of caſes for which neither the Courts of Common Law, nor the Legiſlature, have as yet found it convenient or practicable to eſtabliſh any. In doing which, they are to forbear to interfere with ſuch caſes as they find already in general provided for. A Judge of Equity is alſo to adhere in his deciſions to the ſyſtem of decrees formerly paſſed in his own Court, regular records of which are kept for that purpoſe.

From this latter circumſtance it again follows, that a Judge of Equity, by the very exerciſe he makes of his power, is continually abridging the arbitrary part of it; as every new caſe he determines, every precedent he eſtabliſhes, becomes a land-mark or boundary which both he and his ſucceſſors in office are afterwards expected to regard.

Here it may be added as a concluſion, that appeals from the Decrees paſſed in the Courts of Equity are carried to the Houſe of

Peers; which bare circumstance might suggest that a Judge of Equity is subjected to certain positive rules, besides those "*of nature and* "*conscience only*;" an appeal being naturally grounded on a supposition that some rules of that kind were neglected.

The above discussion on the English Law, has proved much longer than I intended at first; so much as to have swelled, I find, into two new additional Chapters. However, I confess I have been under the greater temptation to treat at some length the subject of the Courts of Equity, as I have found the error (which may be called a constitutional one) concerning the arbitrary office of those Courts, to be countenanced by the apparent authority of Lawyers, and of men of abilities, at the same time that I have not seen in any book any attempt made professedly to confute the same, nor indeed to point out the nature and true office of the Courts of Equity.

CHAPTER XII.

Of Criminal Justice.

WE are now to treat of an article, which, though it does not in England, and indeed should not in any State, make part of the powers which are properly constitutional,

that is, of the reciprocal rights by means of which the Powers that concur to form the Government conſtantly balance each other, yet eſſentially intereſts the ſecurity of individuals, and, in the iſſue, the Conſtitution itſelf; I mean to ſpeak of Criminal Juſtice. But, previous to an expoſition of the laws of England on this head, it is neceſſary to deſire the reader's attention to certain conſiderations.

When a Nation entruſts the power of the State to a certain number of perſons, or to one, it is with a view to two points: the one, to repel more effectually foreign attacks, the other, to maintain domeſtic tranquillity.

To accompliſh the former point, each individual ſurrenders a ſhare of his property, and ſometimes, to a certain degree, even of his liberty. But, though the power of thoſe who are the Heads of the State, may thereby be rendered very conſiderable, yet it cannot be ſaid, that liberty is, after all, in any high degree endangered; becauſe ſhould ever the Executive Power turn againſt the Nation a ſtrength which ought to be employed ſolely for its defence, this Nation, if it were really free, by which I mean, unreſtrained by political prejudices, would be at no loſs for providing the means of its ſecurity.

MAHARAJA SERFOGI'S SARASWATI ... JORE

In regard to the latter object, that is, the maintenance of domeſtic tranquillity, every individual muſt, excluſive of new renunciations of his natural liberty, moreover ſurrender, which is a matter of far more dangerous conſequence, a part of his perſonal ſecurity.

The Legiſlative power, being, from the nature of human affairs, placed in the alternative, either of expoſing individuals to dangers which it is at the ſame time able extremely to diminiſh, or of delivering up the State to the boundleſs calamities of violence and anarchy, finds itſelf compelled to reduce all its members within reach of the arm of the public Power, and, by withdrawing in ſuch caſes the benefit of the Social ſtrength, to leave them expoſed, bare, and defenceleſs, to the exertion of the comparatively immenſe power of the Executors of the laws.

Nor is this all; for, inſtead of that powerful re-action which the public authority ought in the former caſe to experience, here it muſt find none: and the law is obliged to proſcribe even the attempt of reſiſtance. It is therefore in regulating ſo dangerous a power, and in guarding leſt it ſhould deviate from the real end of its inſtitution, that Legiſlation ought to exhauſt all its efforts.

But here it is of great importance to obſerve, that the more powers a Nation has reſerved to itſelf, and the more it limits the authority of the Executors of the laws, the more induſtriouſly ought its precautions to be multiplied.

In a State where, from a ſeries of events, the will of the Prince has at length attained to hold the place of law, he ſpreads an univerſal oppreſſion, arbitrary and unreſiſted; even complaint is dumb; and the individual, undiſtinguiſhable by him, finds a kind of ſafety in his own inſignificance. With reſpect to the few who ſurround him, as they are at the ſame time the inſtruments of his greatneſs, they have nothing to dread but momentary caprices; a danger againſt which, if there prevails a certain general mildneſs of manners, they are in a great meaſure ſecured.

But in a State where the Miniſters of the laws meet with obſtacles at every ſtep, even their ſtrongeſt paſſions are continually put in motion, and that portion of public authority, depoſited with them to be the inſtrument of national tranquillity, eaſily becomes a moſt formidable weapon.

Let us begin with the moſt favourable ſuppoſition, and imagine a Prince whoſe intentions are in every caſe thoroughly upright,—let us even ſuppoſe that he never lends an ear to the

ſuggeſtions of thoſe whoſe intereſt it is to deceive him: nevertheleſs, he will be ſubject to error: and this error, which, I will farther allow, ſolely proceeds from his attachment to the public welfare, yet may very poſſibly happen to prompt him to act as if his views were directly oppoſite.

When opportunities ſhall offer, (and many ſuch will occur) of procuring a public advantage by overleaping reſtraints, confident in the uprightneſs of his intentions, and being naturally not very earneſt to diſcover the diſtant evil conſequences of actions in which, from his very virtue, he feels a kind of complacency, he will not perceive, that, in aiming at a momentary advantage, he ſtrikes at the laws themſelves on which the ſafety of the Nation reſts; and that thoſe acts, ſo laudable when we only conſider the motive of them, make a breach at which tyranny will one day enter.

Yet farther, he will not even underſtand the complaints that will be made againſt him. To inſiſt upon them will appear to him to the laſt degree injurious: pride, when perhaps he is leaſt aware of it, will enter the liſts; what he began with calmneſs, he will proſecute with warmth; and if the laws ſhall not have taken every poſſible precaution, he may think he is acting a very honeſt part, while he treats as

enemies of the State, Men whoſe only crime will be that of being more ſagacious than himſelf, or of being in a better ſituation for judging of the reſults of meaſures.

But it were mightily to exalt human nature, to think that this caſe of a Prince who never aims at augmenting his power, may in any ſhape be expected frequently to occur. Experience, on the contrary, evinces that the happieſt diſpoſitions are not proof againſt the allurements of power, which has no charms but as it leads on to new advances; authority endures not the very idea of reſtraint, nor does it ceaſe to ſtruggle till it has beaten down every boundary.

Openly to level every barrier, at once to aſſume the abſolute Maſter, are, as we ſaid before, fruitleſs taſks. But it is here to be remembered, that thoſe powers of the People which are reſerved as a check upon the Sovereign, can only be effectual ſo far as they are brought into action by private individuals. Sometimes a citizen, by the force and perſeverance of his complaints, opens the eyes of the Nation; at other times, ſome member of the Legiſlature propoſes a law for the removal of ſome public abuſe: theſe, therefore, will be the perſons againſt whom the Prince will direct all his efforts. (*a*)

(*a*) By the word Prince, I mean thoſe who, under what-

And he will the more aſſuredly do ſo, as, from the error ſo uſual among men in power, he will think that the oppoſition he meets with, however general, wholly depends on the activity of but one or two leaders; and amidſt the calculations he will make, both of the ſuppoſed ſmallneſs of the obſtacle which offers to his view, and of the deciſive conſequence of the ſingle blow he thinks he needs to ſtrike, he will be urged on by the deſpair of ambition on the point of being baffled, and by the moſt violent of all hatreds, that which was preceded by contempt.

In that caſe which I am ſtill conſidering, of a really free Nation, the Sovereign muſt be very careful that military violence do not make the ſmalleſt part of his plan: a breach of the ſocial compact like this, added to the horror of the expedient, would infallibly endanger his whole authority. But, on the other hand, as he was reſolved to ſucceed, he will, in defect of other reſources, try the utmoſt extent of the legal powers which the Conſtitution has intruſted with him; and if the laws have not in a manner provided for every poſſible caſe, he will avail himſelf of the imperfect precautions themſelves that have been taken, as a cover to his tyrannical proceedings; he

ever appellation and in whatever Government it may be, are at the head of public affairs.

will purſue ſteadily his particular object, while his profeſſions breathe nothing but the general welfare, and deſtroy the aſſertors of the laws, under the very ſhelter of the forms contrived for their ſecurity (a).

This is not all; independently of the immediate miſchief he may do, if the Legiſlature do not interpoſe in time, the blows will reach the Conſtitution itſelf; and the conſternation becoming general among the People, each individual will find himſelf enſlaved in a State which yet may ſtill exhibit all the common appearances of liberty.

Not only, therefore, the ſafety of the individual, but that of the Nation itſelf, requires the utmoſt precautions in the eſtabliſhment of that neceſſary, but formidable, prerogative of diſpenſing puniſhments. The firſt to be taken, even without which it is impoſſible to avoid the dangers above ſuggeſted, is, that it never be left at the diſpoſal, nor, if it be poſſible, expoſed to the influence of the Man who is the depoſitary of the public power.

(a) If there were any perſon who charged me with calumniating human Nature, for it is her alone I am accuſing here, I would deſire him to caſt his eyes on the Hiſtory of a Lewis XI.—of a *Richelieu*, and, above all, on that of England before the Revolution; he would ſee the arts and activity of Government increaſe, in proportion as it gradually loſt its means of oppreſſion.

The next indiſpenſable precaution is, that neither ſhall this power be veſted in the legiſlative Body; and this precaution, ſo neceſſary alike under every mode of Government, becomes doubly ſo, when only a ſmall part of the Nation has a ſhare in the legiſlative power.

If the judicial authority were lodged in the legiſlative part of the People, not only the great inconvenience muſt enſue of its thus becoming independent, but alſo that worſt of evils, the ſuppreſſion of the ſole circumſtance that can well identify this part of the Nation with the whole, which is a common ſubjection to the rules which they themſelves preſcribe. The legiſlative Body, which could not, without ruin to itſelf, eſtabliſh, openly and by direct laws, diſtinctions in favour of its Members, would introduce them by its judgments; and the People, in electing Repreſentatives, would give themſelves Maſters.

The judicial power ought therefore abſolutely to reſide in a ſubordinate and dependent body; dependent, not in its particular acts, with regard to which it ought to be a ſanctuary, but in its rules and in its forms, which the legiſlative authority muſt preſcribe. How is this body to be compoſed? In this reſpect further precautions muſt be taken.

In a State where the prince is abſolute

Mafter, numerous Bodies of Judges are moft convenient, inafmuch as they reftrain, in a confiderable degree, that refpect of Perfons which is one inevitable attendant on that mode of Government. Befides, thofe bodies, whatever their outward privileges may be, being at bottom in a ftate of great weaknefs, have no other means of acquiring the refpect of the people than their integrity, and their conftancy in obferving certain rules and forms: nay, thefe circumftances united, in fome degree over-awe the Sovereign himfelf, and difcourage the thoughts he might entertain of making them the tools of his caprices (*a*).

But, in an effectually limited Monarchy, that is, where the Prince is underftood to be, and in fact is, fubject to the laws, numerous

(*a*) The above obfervations are in a great meafure meant to allude to the French *Parlemens*, and particularly that of Paris, which forms fuch a confiderable Body as to have been once fummoned as a fourth Order to the General Eftates of the kingdom. The weight of that body, increafed by the circumftance of the Members holding their places for life, has in general been attended with the advantage juft mentioned, of placing them above being over-awed by private individuals in the adminiftration either of civil or criminal Juftice; it has even rendered them fo difficult to be managed by the Court, that the Minifters have been at times obliged to appoint particular Judges, or *Commiffaries*, to try fuch Men as they refolve to ruin.

Bodies of Judicature would be repugnant to the ſpirit of the Conſtitution, which requires that all powers in the State ſhould be as much confined as the end of their inſtitution can allow; not to add, that in the viciſſitudes incident to ſuch a State, they might exert a very dangerous influence.

Beſides, that awe which is naturally inſpired by ſuch Bodies, and is ſo uſeful when it is neceſſary to ſtrengthen the feebleneſs of the laws, would not only be ſuperfluous in a State where the whole power of the Nation is on their ſide, but would moreover have the miſchievous tendency to introduce another ſort of fear than that which Men muſt be taught to entertain. Thoſe mighty Tribunals, I am willing to ſuppoſe, would preſerve, in all ſituations of affairs, that integrity which diſtinguiſhes them in States of a different Conſtitution; they would never inquire after the influence, ſtill leſs the

These, however, are only local advantages, and relative to the nature of the French Government, which is an uncontrouled Monarchy, with conſiderable remains of Ariſtocracy. But in a free State, ſuch a powerful Body of Men, veſted with the power of deciding on the life, honour, and property, of the Citizens, would, as will be preſently ſhewn, be productive of very dangerous political conſequences; and the more ſo, if ſuch Judges had, as is the caſe all over the world, except here, the power of deciding upon the matter of law and the matter of fact.

political ſentiments, of thoſe whoſe fate they were called to decide; but theſe advantages not being founded in the neceſſity of things, and the power of ſuch Judges ſeeming to exempt them from being ſo very virtuous, Men would be in danger of taking up the fatal opinion, that the ſimple exact obſervance of the laws is not the only taſk of prudence: the Citizen called upon to defend, in the ſphere where fortune has placed him, his own rights, and thoſe of the Nation itſelf, would dread the conſequence of even a lawful conduct, and, though encouraged by the law, might deſert himſelf when he came to behold its Miniſters.

In the aſſembly of thoſe who ſit as his Judges, the Citizen might poſſibly deſcry no enemies: but neither would he ſee any Man whom a ſimilarity of circumſtances might engage to take a concern in his fate: and their rank, eſpecially when joined with their numbers, would appear to him, to lift them above that which over-awes injuſtice, where the law has been unable to ſecure any other check, I mean the reproaches of the Public.

And theſe his fears would be conſiderably heightened, if, by the admiſſion of the Juriſprudence received among certain Nations, he beheld thoſe Tribunals, already ſo formidable,

wrap themſelves up in myſtery, and be made, as it were, inacceſſible (*a*).

He could not think, without diſmay, of thoſe vaſt priſons within which he is one day perhaps to be immured—of thoſe proceedings, unknown to him, through which he is to paſs—of that total ſecluſion from the ſociety of other Men—nor of thoſe long and ſecret examinations, in which, abandoned wholly to himſelf, he will have nothing but a paſſive defence to oppoſe to the artfully varied queſtions of Men, whoſe intentions he ſhall at leaſt

(*a*) An alluſion is made here to the ſecrecy with which the proceedings, in the adminiſtration of criminal Juſtice, are to be carried on, according to the rules of the civil law, which in that reſpect are adopted over all Europe. As ſoon as the priſoner is committed, he is debarred of the ſight of every body, till he has gone through his ſeveral examinations. One or two Judges are appointed to examine him, with a Clerk to take his anſwers in writing: and he ſtands alone before them in ſome private room in the priſon. The witneſſes are to be examined apart, and he is not admitted to ſee them till their evidence is cloſed: they are then *confronted* together before all the Judges, to the end that the witneſſes may ſee if the priſoner is really the Man they meant in giving their reſpective evidences, and that the priſoner may object to ſuch of them as he ſhall think proper. This done, the depoſitions of thoſe witneſſes who are adjudged upon trial to be exceptionable, are ſet aſide: the depoſitions of the others are to be laid before the Judges, as well as the anſwers of the priſoner, who has been previouſly called upon to confirm or deny them in

miſtruſt, and in which his ſpirits, broken down by ſolitude, ſhall receive no ſupport, either from the counſels of his friends, or the looks of thoſe who ſhall offer up vows for his deliverance.

The ſecurity of the individual, and the conſciouſneſs of that ſecurity, being then equally eſſential to the enjoyment of liberty, and neceſſary for the preſervation of it, theſe two points muſt never be left out of ſight, in the eſtabliſhment of a judicial power; and I conceive that they neceſſarily lead to the following maxims.

their preſence; and a copy of the whole is delivered to him, that he may, with the aſſiſtance of a Counſel, which is now granted him, prepare for his juſtification. The Judges are, as has been ſaid before, to decide both upon the matter of law and the matter of fact, as well as upon all incidents that may ariſe during the courſe of the proceedings, ſuch as admitting witneſſes to be heard in behalf of the priſoner, &c.

This mode of criminal Judicature may be uſeful as to the bare diſcovering of truth, a thing which I do not propoſe to diſcuſs here; but, at the ſame time, a priſoner is ſo completely delivered up into the hands of the Judges, who even can detain him almoſt at pleaſure, by multiplying or delaying his examinations, that, whenever it is adopted, Men are almoſt as much afraid of being accuſed, as of being guilty, and eſpecially grow very cautious how they interfere in public matters. We ſhall ſee preſently how the Trial by Jury, peculiar to the Engliſh Nation, is admirably adapted to the nature of a free State.

In the firſt place, I ſhall remind the reader of what has been laid down above, that the judicial authority ought never to reſide in an independent Body; ſtill leſs in him who is already the truſtee of the executive power.

Secondly, the party accuſed ought to be provided with every poſſible means of defence. Above all things, the whole proceedings ought to be public. The Courts, and their different forms, muſt be ſuch as to inſpire reſpect, but never terror; and the caſes ought to be ſo accurately aſcertained, the limits ſo clearly marked, as that neither the executive power, nor the Judges, may ever hope to tranſgreſs them with impunity.

In fine, ſince we muſt abſolutely pay a price for the advantage of living in ſociety, not only by relinquiſhing ſome ſhare of our natural liberty (a ſurrender which, in a wiſely framed Government, a wiſe Man will make without reluctance) but even alſo by reſigning part of our perſonal ſecurity, in a word, ſince all judicial power is an evil, though a neceſſary one, no care ſhould be omitted to reduce as far as poſſible the dangers of it.

And as there is however a period at which the prudence of Man muſt ſtop, at which the ſafety of the individual muſt be given up, and

the law is to reſign him over to the judgment of a few perſons, that is, to ſpeak plainly, to a deciſion in ſome ſenſe arbitrary, it is neceſſary that this law ſhould narrow as far as poſſible this ſphere of peril, and ſo order matters, that when the ſubject ſhall happen to be ſummoned to the deciſion of his fate by the fallible conſcience of a few of his fellow-creatures, he may always find in them advocates, and never adverſaries.

CHAP. XIII.

The Subject continued.

AFTER having offered to the reader, in the preceding Chapter, ſuch general conſiderations as I thought neceſſary, in order to convey a juſter idea of the ſpirit of the criminal Judicature in England, and of the advantages peculiar to it, I now proceed to exhibit the particulars.

When a perſon is charged with a crime, the Magiſtrate, who is called in England *a Juſtice of the Peace*, iſſues a warrant to apprehend him; but this warrant can be no more than an order for bringing the party before him: he muſt then hear him, and take down in writ-

ing his anſwers, together with the different informations. If it appears on this examination, either that the crime laid to the charge of the perſon who is brought before the Juſtice, was not committed, or that there is no juſt ground to ſuſpect him of it, he muſt be ſet abſolutely at liberty; if the contrary reſults from the examination, the party accuſed muſt give bail for his appearance to anſwer to the charge; unleſs in capital caſes, for then he muſt, for ſafer cuſtody, be really committed to priſon, in order to take his trial at the next Seſſions.

But this precaution of requiring the examination of an accuſed perſon, previous to his impriſonment, is not the only care which the law has taken in his behalf; it has farther ordained that the accuſation againſt him ſhould be again diſcuſſed, before he can be expoſed to the danger of a trial. At every ſeſſion the Sheriff appoints what is called the *Grand Jury*. This Aſſembly muſt be compoſed of more than twelve Men, and leſs than twenty-four; and is always formed out of the moſt conſiderable perſons in the County. Its function is to examine the evidence that has been given in ſupport of every charge: if twelve of thoſe perſons do not concur in

the opinion that an accufation is well grounded, the party is immediately difcharged ; if, on the contrary, twelve of the Grand Jury find the proofs fufficient, the prifoner is faid to be indicted, and is detained in order to go through the remaining proceedings.

On the day appointed for his Trial, the prifoner is brought to the bar of the Court, where the Judge, after caufing the bill of indictment to be read in his prefence, muft afk him how he would be tried : to which the prifoner anfwers, *by God and my Country* ; by which he is underftood to claim to be tried by a Jury, and to have all the judicial means of defence to which the law intitles him. The Sheriff then appoints what is called the Petty Jury : this muft be compofed of twelve Men, chofen out of the county where the crime was committed, and poffeffed of a landed income of ten pounds by the year : their declaration finally decides on the truth or falfhood of the accufation.

As the fate of the prifoner thus entirely depends on the Men who compofe this Jury, Juftice requires that he fhould have a fhare in the choice of them ; and this he has through the extenfive right which the law has granted him, of challenging, or objecting to, fuch of them as he may think exceptionable.

MAHARAJA SER

These challenges are of two kinds. The first, which is called the challenge to the *array*, has for its object to have the whole pannel set aside: it is proposed by the prisoner when he thinks that the Sheriff who formed the pannel is not indifferent in the cause; for instance, if he thinks he has an interest in the prosecution, that he is related to the prosecutor, or in general to the party who pretends to be injured.

The second kind of challenges are called, to the Polls *(in capita)*: they are exceptions proposed against the Jurors, severally, and are reduced to four heads by Sir Edward Coke. That which he calls *propter honoris respectum*, may be proposed against a Lord impannelled on a Jury; or he might challenge himself. That *propter defectum* takes place when a Juror is legally incapable of serving that office, as, if he was an alien; if he had not an estate sufficient to qualify him, &c. That *propter delictum* has for its object to set aside any Juror convicted of such crime or misdemeanor as renders him infamous, as felony, perjury, &c. That *propter affectum* is proposed against a Juror who has an interest in the conviction of the prisoner: he, for instance, who has an action depending between him and the prisoner; he who is of kin to the prosecutor, or

his counſel, attorney, or of the ſame ſociety or corporation with him, &c. (*a*).

In fine, in order to relieve even the imagination of the priſoner, the law allows him, independently of the ſeveral challenges above mentioned, to challenge peremptorily, that is to ſay, without ſhewing any cauſe, twenty Jurors ſucceſſively (*b*).

When at length the Jury is formed, and they have taken their oath, the indictment is opened, and the proſecutor produces the proofs of his accuſation. But, unlike to the rules of the Civil Law, the witneſſes deliver their evidence in the preſence of the priſoner: the latter may put queſtions to them; he may alſo produce witneſſes in his behalf, and have them examined upon oath. Laſtly, he is allowed to have a Counſel to aſſiſt him, not only in the diſcuſſion of any point of law which may be complicated with the fact, but alſo in the inveſtigation of the fact itſelf, and

(*a*) When a priſoner is an alien, one half of the Jurors muſt alſo be aliens; a Jury thus formed is called a Jury *de medietate linguæ*.

(*b*) When theſe ſeveral challenges reduce too much the number of the Jurors on the Pannel, which is forty-eight, new ones are named on a writ of the Judge, who are named the *Tales*, from thoſe words of the writ, *decem or octo tales*.

who points out to him the queſtions he ought to aſk, or even aſks them for him (*a*).

Such are the precautions which the law has deviſed for caſes of common proſecutions; but in thoſe for High Treaſon, and for miſpriſion of treaſon, that is to ſay, for a conſpiracy againſt the life of the King, or againſt the State, and for a concealment of it (*b*), accuſations which ſuppoſe a heat of party and powerful accuſers, the law has provided for the accuſed party farther ſafeguards.

Firſt, no perſon can be queſtioned for any treaſon, except a direct attempt on the life of the King, after three years elapſed ſince the offence. 2°. The accuſed party may, independently of his other legal grounds of challenging, *peremptorily* challenge thirty-five Jurors. 3°. He may have two Counſel to aſſiſt him through the whole courſe of the proceedings. 4°. That his witneſſes may not be kept away, the Judges muſt grant him the ſame compulſive proceſs to bring them in, which they iſſue to compel the evidences againſt him. 5°. A copy of his indictment muſt be delivered

(*a*) This laſt article, however, is not eſtabliſhed by law, except in caſes of treaſon; it is done only through cuſtom and the indulgence of the Judges.

(*b*) The penalty of a miſpriſion of treaſon is, the forfeiture of all goods, and impriſonment for life.

to him ten days at leaſt before the trial, in preſence of two witneſſes, and at the expence of five ſhillings; which copy muſt contain all the facts laid to his charge, the names, profeſſions, and abodes, of the Jurors who are to be on the pannel, and of all the witneſſes who are intended to be produced againſt him (*a*).

When, either in caſes of high treaſon, or of inferior crimes, the proſecutor and the priſoner have cloſed their evidence, and the witneſſes have anſwered to their reſpective queſtions both of the Bench, and of the Jurors, one of the Judges makes a ſpeech, in which he ſums up the facts which have been advanced on both ſides. He points out to the Jury what more preciſely conſtitutes the hinge of the queſtion before them; and he gives them his opinion both with regard to the evidences that have been given, and to the point of law which is to guide them in their deciſion. This done, the Jury withdraw into an adjoining room, where they muſt remain without eating and drinking, and without fire, till they have agreed unanimouſly among themſelves, unleſs the Court give a permiſſion to the contrary. Their decla-

(*a*) Stat. 7 Will. III. c. 3. and 7 Ann. c. 21. The latter was to be in force only after the death of the late Pretender.

ration or verdict (*veredictum*) must (unless they choose to give a special verdict) pronounce expressly, either that the prisoner is guilty, or that he is not guilty, of the fact laid to his charge. Lastly, the fundamental maxim of this mode of proceeding, is, that the Jury must be unanimous.

And as the main object of the institution of the Trial by a Jury, is to guard accused persons against all decisions whatsoever by Men invested with any permanent official authority (*a*), it is not only a settled principle that the opinion which the Judge delivers has no weight but such as the Jury choose to give it; but their verdict must besides comprehend the whole matter in trial, and decide as well upon the fact, as upon the point of law that may arise out of it: in other words, they must pronounce both on the commission of a certain fact, and on the reason which makes such fact to be contrary to law (*b*).

(*a*) "Laws," as *Junius* says extremely well, "are intended, not to trust to what Men will do, but to guard against what they may do."

(*b*) Unless they choose to give a *special* verdict.—— "When the Jury," says Coke, "doubt of the law, and intend to do that which is just, they find the *special* matter, and the entry is, *Et super totâ materiâ petunt discretionem Justiciariorum*." Inst. iv. p. 41.——These words of Coke, we may observe, confirm beyond a doubt the power of the Jury to determine on the

This is even ſo eſſential a point, that a bill of indictment muſt expreſsly be grounded upon thoſe two objects. Thus, an indictment for treaſon muſt charge, that the alleged facts were committed with a treaſonable intent (*proditorie*). An indictment for murder muſt expreſs, that the fact has been committed with *malice prepenſe*, or aforethought. An indictment for robbery muſt charge, that the things were taken with an intention to rob (*animo furandi*), &c. &c. (*a*).

Juries are even ſo uncontrollable in their verdict, ſo apprehenſive has the Conſtitution been left precautions to reſtrain them in the exerciſe of their functions, however ſpecious in the beginning, might in the iſſue be converted

whole matter in trial: a power which in all conſtitutional views is neceſſary; and the more ſo, ſince a priſoner cannot in England challenge the Judge, as he can under the Civil Law, and for the ſame cauſe as he can a witneſs.

(*a*) The principle that a Jury is to decide both on the fact and the *criminality* of it, is ſo well underſtood, that if a verdict were ſo framed as only to have for its object the bare exiſtence of the fact laid to the charge of the priſoner, no puniſhment could be awarded by the Judge in conſequence of it. Thus, in the proſecution of Woodfall, for printing Junius's Letter to the King, the Jury brought in the following verdict, *guilty of printing and publiſhing, only;* the conſequence of which was the diſcharge of the priſoner.

to the very deſtruction of the ends of that inſtitution, that it is a repeated principle that a Juror, in delivering his opinion, is to have no other rule but his opinion itſelf,—that is to ſay, no other rule than the belief which reſults to his mind from the facts alleged on both ſides, from their probability, from the credibility of the witneſſes, and even from all ſuch circumſtances as he may have a private knowledge of. Lord Chief Juſtice Hale expreſſes himſelf on this ſubject, in the following terms, in his Hiſtory of the Common Law of England, chap. 12. § 11.

" In this receſs of the Jury, they are to " conſider their evidence, to weigh the credi- " bility of the witneſſes, and the force and " efficacy of their teſtimonies; wherein (as I " before ſaid) they are not preciſely bound to " the rules of the Civil Law, viz. to have " two witneſſes to prove every fact, unleſs it " be in caſes of treaſon, nor to reject one " witneſs becauſe he is ſingle, or always to " believe two witneſſes, if the probability " of the fact does upon other circumſtances " reaſonably encounter them; for the Trial " is not here ſimply by witneſſes, but *by* " *Jury*: nay, it may ſo fall out, that a Jury " upon their own knowledge may know a

"thing to be falſe that a witneſs ſwore to be "true, or may know a witneſs to be incompe- "tent or incredible, though nothing be object- "ed againſt him — and may give their verdict "accordingly (*a*)."

If the verdict pronounces *not guilty*, the priſoner is ſet at liberty, and cannot, on any pretence, be tried again for the ſame offence. If the verdict declares him *guilty*, then, and not till then, the Judge enters upon his function as a Judge, and pronounces the puniſhment which the law appoints (*b*). But, even in this caſe, he is not to judge according to his own

(*a*) The ſame principles and forms are obſerved in civil matters; only peremptory challenges are not allowed.

(*b*) When the party accuſed is one of the Lords temporal, he likewiſe enjoys the univerſal privilege of being judged by his Peers; though the trial then differs in ſeveral reſpects. In the firſt place, as to the number of the Jurors: all the Peers are to perform the function of ſuch, and they muſt be ſummoned at leaſt twenty days beforehand. II. When the Trial takes place during the ſeſſion, it is ſaid to be in the *High Court of Parliament*; and the Peers officiate at once as Jurors and Judges: when the Parliament is not ſitting, the trial is ſaid to be in the Court of the *High Steward of England*; an office which is not uſually in being, but is revived on thoſe occaſions: and the High Steward performs the office of Judge. III. In either of theſe caſes, unanimity is not required; and the majority, which muſt conſiſt of twelve perſons at leaſt, is to decide.

discretion only; he must strictly adhere to the letter of the law; no constructive extension can be admitted, and however criminal a fact might in itself be, it would pass unpunished if it were found not to be positively comprehended in some one of the cases provided for by the law. The evil that may arise from the impunity of a crime, that is, an evil which a new law may instantly stop, has not by the English laws been considered as of magnitude sufficient to be put in comparison with the danger of breaking through a barrier on which so mightily depends the safety of the individual (*a*).

To all these precautions taken by the law for the safety of the Subject, one circumstance must be added, which indeed would alone justify the partiality of the English Lawyers to their laws in preference to the Civil Law,—I mean the absolute rejection they have made of

(*a*) I shall give here an instance of the scruple with which the English Judges proceed upon occasions of this kind. Sir *Henry Ferrers* having been arrested by virtue of a warrant, in which he was termed a *Knight*, though he was a Baronet, Nightingale his servant took his part, and killed the Officer; but it was decided, that as the Warrant "was an ill Warrant, the killing an Officer in "executing that Warrant, cannot be murder, because no "good Warrant: wherefore he was found not guilty of "the murder and manslaughter."—See Croke's Rep. P. III. p. 371.

torture (*a*). Without repeating here what has been ſaid on this ſubject by the admirable Author of the Treatiſe on *Crimes and Puniſhments*, I ſhall only obſerve, that the torture, in itſelf ſo horrible an expedient, would, more eſpecially in a free State, be attended with the moſt fatal conſequences. It was abſolutely neceſſary to preclude, by rejecting it, all attempts to make the purſuit of guilt an inſtrument of vengeance againſt the innocent. Even the convicted criminal muſt be ſpared, and a practice at all rates exploded, which might ſo eaſily be made an inſtrument of endleſs vexation and perſecution (*b*).

(*a*) Coke ſays (Inſt. III. p. 35.) that when John Holland, Duke of Exeter, and William de la Poole, Duke of Suffolk, renewed, under Henry VI. the attempts made to introduce the Civil Law, they exhibited the torture as a *beginning thereof*. The inſtrument was called the Duke of Exeter's daughter.

(*b*) Judge Foſter relates, from Whitlock, that the Biſhop of London having ſaid to Felton, who had aſſaſſinated the Duke of Buckingham, "If you will not confeſs, "you *muſt go to the Rack*." The Man replied, "If it muſt "be ſo, I know not who I may accuſe in the extremity of "the torture; Biſhop Laud perhaps, or any Lord at this "Board."

"Sound ſenſe, (adds Foſter) in the mouth of an Enthuſiaſt "and a Ruffian!"

Laud having propoſed the Rack, the matter was ſhortly debated at the Board, and it ended in a reference to the Judges, who unanimouſly reſolved that the Rack could not be legally uſed.

For the farther prevention of abuſes, it is an invariable uſage, that the Trial be public. The priſoner neither makes his appearance, nor pleads, but in places where every body may have free entrance; and the witneſſes when they give their evidence, the Judge when he delivers his opinion, the Jury when they give their verdict, are all under the public eye. Laſtly, the Judge cannot change either the place or the kind of puniſhment ordered by the law; and a Sheriff who ſhould take away the life of a Man in a manner different from that which the law preſcribes, would be proſecuted as guilty of murder (*a*).

In a word, the Conſtitution of England being a free Conſtitution, demanded from that circumſtance alone (as I ſhould already have but too often repeated, if ſo fundamental a truth could be too often urged) extraordinary precautions to guard againſt the dangers which unavoidably attend the Power of inflicting puniſhments; and it is particularly when conſidered in this light, that the Trial by Jury proves an admirable inſtitution.

(*a*) And if any other perſon but the Sheriff, even the Judge himſelf, were to cauſe death to be inflicted upon a Man, though convicted, it would be deemed homicide. See Blackſtone, book iv. chap. 14.

By means of it, the Judicial Authority is not only placed out of the hands of the man who is veſted with the Executive Authority — it is even out of the hands of the Judge himſelf. Not only the perſon who is truſted with the public power cannot exert it, till he has as it were received the permiſſion to that purpoſe, of thoſe who are ſet apart to adminiſter the laws; but theſe latter are alſo reſtrained in a manner exactly alike, and cannot make the law ſpeak, but when, in their turn, thay have likewiſe received permiſſion.

And thoſe perſons to whom the law has thus excluſively delegated the prerogative of deciding that a puniſhment is to be inflicted,— thoſe Men without whoſe declaration the Executive and the Judicial Powers are both thus bound down to inaction, do not form among themſelves a permanent Body, who may have had time to ſtudy how their power can ſerve to promote their private views or intereſt: they are Men ſelected at once from among the people, who perhaps never were before called to the exerciſe of ſuch a function, nor foreſee that they ever ſhall be called to it again.

As the extenſive right of challenging, effectually baffles, on the one hand, the ſecret prac-

MAHARAJA BERFO… ORE

tices of ſuch as, in the face of ſo many diſcouragements, might ſtill endeavour to make the Judicial Power ſubſervient to their own views, and on the other excludes all perſonal reſentments, the ſole affection which remains to influence the integrity of thoſe who alone are intitled to put the public power into action, during the ſhort period of their authority, is, that their own fate as ſubjects is eſſentially connected with that of the Man whoſe doom they are going to decide.

In fine, ſuch is the happy nature of this inſtitution, that the Judicial Power, a power ſo formidable in itſelf, which is to diſpoſe, without finding any reſiſtance, of the property, honour, and life of individuals, and which, whatever precautions may be taken to reſtrain it, muſt in a great degree remain arbitrary, may be ſaid in England, to exiſt,—to accompliſh every intended end,—and to be in the hands of nobody (*a*).

In all theſe obſervations on the advantages

(*a*) The conſequence of this Inſtitution is, that no Man in England ever meets the Man of whom he may ſay, "That Man has a power to decide on my death or life." If we could for a moment forget the advantages of that Inſtitution, we ought at leaſt to admire the ingenuity of it.

of the Englifh criminal laws, I have only confidered it as connected with the Conftitution, which is a free one, and it is in this view alone that I have compared it with the Jurifprudence received in other States. Yet, abftractedly from the weighty conftitutional confiderations which I have fuggefted, I think there are ftill other interefting grounds of pre-eminence on the fide of the laws of England.

In the firft place, they do not permit that a Man fhould be made to run the rifque of a trial, but upon the declaration of twelve perfons at leaft (*the Grand Jury*). Whether he be in prifon, or on his Trial, they never for an inftant refufe free accefs to thofe who have either advice, or comfort, to give him; they even allow him to fummon all who may have any thing to fay in his favour. And laftly, what is of very great importance, the witneffes againft him muft deliver their teftimony in his prefence; he may crofs-examine them, and, by one unexpected queftion, confound a whole fyftem of calumny: indulgences thefe, all denied by the laws of other Countries.

Hence, though an accufed perfon may be expofed to have his fate decided by perfons (*the Petty Jury*) who poffefs not, perhaps, all

that ſagacity which in ſome delicate caſes it is particularly advantageous to meet with in a Judge, yet this inconvenience is amply compenſated by the extenſive means of defence with which the law, as we have ſeen, has provided him. If a Juryman does not poſſeſs that expertneſs which is the reſult of long practice, yet neither does he bring to Judgment that hardneſs of heart which is, more or leſs, alſo the conſequence of it: and bearing about him the principles, let me ſay, the unimpaired inſtinct of humanity, he trembles while he exerciſes the awful office to which he finds himſelf called, and in doubtful caſes always decides for mercy.

It is to be further obſerved, that in the uſual courſe of things, Juries pay great regard to the opinions delivered by the Judges: that in thoſe caſes where they are clear as to the fact, yet find themſelves perplexed with regard to the degree of guilt connected with it, they leave it, as has been ſaid before, to be aſcertained by the diſcretion of the Judge, by returning what is called a *Special Verdict*: that, whenever circumſtances ſeem to alleviate the guilt of a perſon againſt whom nevertheleſs the proof has been poſitive, they temper their verdict by recommending him to the mercy

of the King; which ſeldom fails to produce at leaſt a mitigation of the puniſhment: that, though a Man once acquitted, can never under any pretence whatſoever be again brought into peril for the ſame offence, yet a new Trial would be granted, if he had been found guilty upon proofs ſtrongly ſuſpected of being falſe. (Blackſt. b. iv. c. 27.) Laſtly, what diſtinguiſhes the laws of England from thoſe of other countries in a very honourable manner, is, that as the torture is unknown to them, ſo neither do they know any more grievous puniſhment than the ſimple deprivation of life.

All theſe circumſtances have combined to introduce ſuch a mildneſs into the exerciſe of criminal Juſtice, that the trial by Jury is that point of their liberty to which the people of England are moſt thoroughly and univerſally wedded; and the only complaint I have ever heard uttered againſt it, has been by Men who, more ſenſible of the neceſſity of public order than alive to the feelings of humanity, think that too many offenders eſcape with impunity.

THE TANJORE MAHARAJA SERFOGI'S SARASVATI MAHAL.

CHAP. XIV.

The Subject concluded. —— Laws relative to Imprisonment.

BUT what completes that ſenſe of independence which the laws of England procure to every individual (a ſenſe which is the nobleſt advantage attending liberty) is the greatneſs of their precautions upon the delicate point of Impriſonment.

In the firſt place, by allowing, in moſt caſes, of enlargement upon bail, and by preſcribing, on that article, expreſs rules for the Judges to follow, they have removed all pretexts which circumſtances might afford, of depriving a man of his liberty.

But it is againſt the Executive Power that the Legiſlature has, above all, directed its efforts: nor has it been but by ſlow degrees that it has been enabled to wreſt from it a branch of power which enabled him to deprive the people of their Leaders, as well as to intimidate thoſe who might be tempted to

assume the function; and which, having thus all the efficacy of more odious means without the dangers of them, was perhaps the most formidable weapon with which it might attack public liberty.

The methods originally pointed out by the laws of England for the enlargement of a person unjustly imprisoned, were the writs of *mainprize*, *de odio & atia*, and *de homine replegiando*. Those writs, which could not be denied, were an order to the Sheriff of the County in which a person was confined, to inquire into the causes of his confinement; and, according to the circumstances of his case, either to discharge him completely, or upon bail.

But the most useful method, and which even, by being most general and certain, has tacitly abolished all the others, is the writ of *Habeas Corpus*, so called because it begins with the words *Habeas corpus ad subjiciendum*. This writ, being a writ of high prerogative, must issue from the Court of King's Bench: its effects extend equally to every County; and the King by it requires, or is understood to require, the person who holds one of his subjects in custody, to carry him before the Judge, with the date of the confinement, and

the cauſe of it, in order to diſcharge him or continue to detain him, according as the Judge ſhall decree.

But this writ, which might be a reſource in caſes of violent impriſonment effected by individuals or granted at their requeſt, was but a feeble one, or rather was no reſource at all, againſt the prerogative of the Prince, eſpecially under the reigns of the Tudors, and in the beginning of that of the Stuarts. And even in the firſt years of Charles the Firſt, the Judges of the King's Bench, who, in conſequence of the ſpirit of the times, and of their holding their places *durante bene placito*, were conſtantly devoted to the Court, declared, "that they "could not, upon a *Habeas Corpus*, either bail "or deliver a priſoner, though committed "without any cauſe aſſigned, in caſe he was "committed by the ſpecial command of the "King, or by the Lords of the Privy Coun- "cil."

Thoſe principles, and the mode of procedure which reſulted from them, drew the attention of Parliament; and in the Act called the Petition of Right, paſſed in the third year of the reign of Charles the Firſt, it was enacted, that no perſon ſhould be kept

in cuſtody, in conſequence of ſuch impriſonments.

But the Judges knew how to evade the intention of this Act; they indeed did not refuſe to diſcharge a Man, impriſoned without a cauſe; but they uſed ſo much delay in the examination of the cauſes, that they obtained the full effect of an open denial of Juſtice.

The Legiſlature again interpoſed, and in the Act paſſed in the ſixteenth year of the reign of Charles the Firſt, the ſame in which the Star-Chamber was ſuppreſſed, it was enacted, that "if any perſon be committed by the King "himſelf in perſon, or by his Privy Council, "or by any of the Members thereof, he ſhall "have granted unto him, without any delay "upon any pretence whatſoever, a writ of "*Habeas Corpus*; and that the Judge ſhall "thereupon, within three Court-days after the "return is made, examine and determine the "legality of ſuch impriſonment."

This Act ſeemed to preclude every poſſibility of future evaſion: yet it was evaded ſtill; and by the connivance of the Judges, the perſon who detained the priſoner could, without danger, wait for a ſecond and third writ, called an *Alias* and a *Pluries*, before he produced him.

All thefe different artifices gave at length birth to the famous Act of *Habeas Corpus*, paffed in the thirtieth year of the reign of Charles the Second, which is confidered in England as a fecond Great Charter, and has finally fuppreffed all the refources of oppreffion (*a*).

The principal articles of this Act are, to fix the different terms allowed for bringing a prifoner: thofe terms are proportioned to the diftance, and none can in any cafe exceed twenty days.

2. That the Officer and Keeper neglecting to make due returns, or not delivering to the prifoner, or his agent, within fix hours after demand, a copy of the warrant of commitment, or fhifting the cuftody of the prifoner from one to another, without fufficient reafon or authority (fpecified in the act), fhall for the firft offence forfeit one hundred pounds, and for the fecond two hundred, to the party grieved, and be difabled to hold his office.

(*a*) The real title of this Act is, *An Act for better fecuring the Subject, and for Prevention of Imprifonment beyond the Seas.*

3. No perſon, once delivered by *Habeas Corpus*, ſhall be recommitted for the ſame offence, on penalty of five hundred pounds,

4. Every perſon committed for treaſon or felony, ſhall, if he require it, in the firſt week of the next term, or the firſt day of the next ſeſſion, be indicted in that term or ſeſſion, or elſe admitted to bail, unleſs the King's witneſſes cannot be produced at that time: and if not indicted and tried in the ſecond term or ſeſſion, he ſhall be diſcharged of his impriſonment for ſuch imputed offence.

5. Any of the twelve Judges, or the Lord Chancellor, who ſhall deny a writ of *Habeas Corpus*, on ſight of the warrant, or on oath that the ſame is refuſed, ſhall forfeit ſeverally to the party grieved five hundred pounds.

6. No inhabitant of England (except perſons contracting, or convicts, praying to be tranſported) ſhall be ſent priſoner to Scotland, Ireland, Jerſey, Guernſey, or any place beyond the Seas, within or without the King's dominions,—on pain that the party committing, his adviſers, aiders, and aſſiſtants, ſhall forfeit to the party grieved a ſum not leſs then five hundred pounds, to be recovered with treble coſts,—ſhall be diſabled to bear any

office of truſt or profit,—ſhall incur the penalties of a *præmunire* (*a*), and be incapable of the King's pardon.

(*a*) The Statutes of *præmunire*, thus called from the writ for their execution, which begins with the words *præmunire* (for *præmonere*) *facias*, were originally deſigned to oppoſe the uſurpations of the Popes. The firſt was paſſed under the reign of Edward the Firſt, and has been followed by ſeveral others, which, even before the Reformation, eſtabliſhed ſuch effectual proviſions as to draw upon one of them the epithet of *Execrabile Statutum*. The offences againſt which thoſe Statutes were framed, were likewiſe diſtinguiſhed by the appellation of *præmunire*; and under that word were included in general all attempts to promote the Pope's authority at the expence of the King's. The puniſhment decreed for ſuch caſes, was alſo called a *præmunire*: it has ſince been extended again to ſeveral other kinds of offence, and amounts to "the impriſonment for life, and "forfeiture of all goods and rents of lands during life." See Blackſtone's Com. book iv. ch. 8.

BOOK II.

CHAP. I.

Some Advantages peculiar to the English Constitution. 1. The Unity of the Executive Power.

WE have seen in former Chapters, the resources allotted to the different parts of the English Government for balancing each other, and how their reciprocal actions and re-actions produce the freedom of the Constitution, which is no more than an equilibrium between the ruling Powers of the State. I now propose to shew that the particular nature and functions of these same constituent parts of the Government, which give it so different an appearance from that of other free States, are moreover attended with peculiar and very great advantages, which have not hitherto been sufficiently observed.

The firſt peculiarity of the Engliſh Government, as a free Government, is its having a King,—its having thrown into one place the whole maſs, if I may uſe the expreſſion, of the Executive Power, and having invariably and for ever fixed it there. By this very circumſtance alſo has the *depoſitum* of it been rendered ſacred and inexpugnable;—by making one great, very great Man, in the State, has an effectual check been put to the pretenſions of thoſe who otherwiſe would ſtrive to become ſuch, and diſorders have been prevented, which, in all Republics, ever brought on the ruin of liberty, and, before it was loſt, obſtructed the enjoyment of it.

If we caſt our eyes on all the States that ever were free, we ſhall ſee that the People ever turning their jealouſy, as it was natural, againſt the Executive Power, but never thinking of the means of limiting it that has ſo happily taken place in England (*a*), never employed any other expedient beſides the obvious one, of truſting that Power to Magiſtrates whom they appointed annually; which

(*a*) The rendering that power dependent on the People for its ſupplies.—See on this ſubject Chapter VI. Book I.

was in great meaſure the ſame as keeping the management of it to themſelves. Whence it reſulted, that the People, who, whatever may be the frame of the Government, always poſſeſs, after all, the reality of power, thus uniting in themſelves with this reality of power the actual exerciſe of it, in form as well as in fact, conſtituted the whole State. In order therefore legally to diſturb the whole State, nothing more was requiſite than to put in motion a certain number of individuals.

In a State which is ſmall and poor, an arrangement of this kind is not attended with any great inconveniences, as every individual is taken up with the care of providing for his ſubſiſtence, as great objects of ambition are wanting, and as evils cannot, in ſuch a State, ever become much complicated. In a ſtate that ſtrives for aggrandiſement, the difficulties and danger attending the purſuit of ſuch a plan, inſpire a general ſpirit of caution, and every individual makes a ſober uſe of his rights as a Citizen.

But when, at length, thoſe exterior motives come to ceaſe, and the paſſions, and even the virtues, which they excited, thus become reduced to a ſtate of inaction, the People

turn their eyes back towards the interior of the Republic, and every individual, in ſeeking then to concern himſelf in all affairs, ſeeks for new objects that may reſtore him to that ſtate of exertion which habit, he finds, has rendered neceſſary to him, and to exerciſe a ſhare of power which, ſmall as it is, yet flatters his vanity.

As the preceding events muſt needs have given an influence to a certain number of Citizens, they avail themſelves of the general diſpoſition of the People to promote their private views: the legiſlative power is thenceforth continually in motion; and as it is badly informed and falſely directed, almoſt every exertion of it is attended with ſome injury either to the Laws, or the State.

This is not all; as thoſe who compoſe the general Aſſemblies cannot, in conſequence of their numbers, entertain any hopes of gratifying their own private ambition, or in general their own private paſſions, they at leaſt ſeek to gratify their political caprices, and they accumulate the honours and dignities of the State on ſome favourite whom the public voice happens to raiſe at that time.

But, as in ſuch a State there can be, from the irregularity of the determinations of the

People, no ſuch thing as a ſettled courſe of meaſures, it happens that men never can exactly tell the preſent ſtate of public affairs. The power thus given away is already grown very great, before thoſe for whom it was given ſo much as ſuſpect it; and he himſelf who enjoys that power, does not know its full extent: but then, on the firſt opportunity that offers, he ſuddenly pierces through the cloud which hid the ſummit from him, and at once ſeats himſelf upon it. The People, on the other hand, no ſooner recover ſight of him, than they ſee their Favourite now become their Maſter, and diſcover the evil, only to find that it is paſt remedy.

As this power, thus ſurreptitiouſly acquired, is deſtitute of the ſupport both of the law and of the ancient courſe of things, and is even but indifferently reſpected by thoſe who have ſubjected themſelves to it, it cannot be maintained but by abuſing it. The People at length ſucceed in forming ſomewhere a centre of union; they agree in the choice of a Leader; this Leader in his turn riſes; in his turn alſo he betrays his engagements; power produces its wonted effects; and the Protector becomes a Tyrant.

This is not all; the ſame cauſes which have given a Maſter to the State, give it two, give it three. All thoſe rival powers endeavour to ſwallow up each other; the State becomes a ſcene of endleſs quarrels and broils, and is in a continual convulſion.

If amidſt ſuch diſorders the People retained their freedom, the evil muſt indeed be very great, to take away all the advantages of it; but they are ſlaves, and yet have not what in other Countries makes amends for political ſervitude, I mean tranquillity.

In order to prove all theſe things, if proofs were deemed neceſſary, I would only refer the reader to what every one knows of Piſiſtratus and Megacles, of Marius and Sylla, of Cæſar and Pompey. However, I cannot avoid tranſlating a part of the ſpeech which a Citizen of Florence addreſſed once to the Senate; the reader will find in it a kind of abridged ſtory of all Republics; at leaſt of thoſe which, by the ſhare allowed to the People in the Government, deſerved that name, and which, beſides, have attained a certain degree of extent and power.

"And that nothing human may be per-
"petual and ſtable, it is the will of Heaven

"that in all States whatſoever, there ſhould "ariſe certain deſtructive families, who are "the bane and ruin of them. Of this our "own Republic affords as many and more de-"plorable examples than any other, as it owes "its misfortunes not only to one, but to ſeve-"ral ſuch families. We had at firſt the *Buon-"delmonti* and the *Huberti*. We had afterwards "the *Donati* and the *Cerchi*; and at preſent, "(ſhameful and ridiculous conduct!) we are "waging war among ourſelves for the *Ricci* "and the *Albizzi*.

"When in former times the Ghibelins "were ſuppreſſed, every one expected that "the Guelfs, being then ſatisfied, would have "choſen to live in tranquillity; yet, but a "little time had elapſed, when they again "divided themſelves into the factions of the "*Whites* and the *Blacks*. When the Whites "were ſuppreſſed, new parties aroſe, and new "troubles followed. Sometimes battles were "fought in favour of the Exiles; and at other "times, quarrels broke out between the No-"bility and the People. And, as if reſolved "to give away to others what we ourſelves "neither could, or would, peaceably enjoy, "we committed the care of our liberty

" ſometimes to King Robert, and at other " times to his brother, and at length to the " Duke of Athens; never ſettling nor reſting " in any kind of Government, as not knowing " either how to enjoy liberty, or ſupport ſervi- " tude (*a*)."

The Engliſh Conſtitution has prevented the poſſibility of misfortunes of this kind. Not only by diminiſhing the power, or rather the *actual exerciſe* of the power, of the People (*b*), and making them ſhare in the Legiſlature only by their Repreſentatives, the irreſiſtible violence has been avoided of thoſe numerous and general Aſſemblies, which, on whatever ſide they throw their weight, bear down every thing. Beſides, as the power of the People, when they have any kind of power, and know how to uſe it, is at all times really formidable, the Conſtitution has ſet a counterpoiſe to it; and the Royal authority is this counterpoiſe.

(*a*) See the Hiſtory of Florence, by Machiavel, lib. iii.

(*b*) We ſhall ſee in the ſequel, that this diminution of the exerciſe of the power of the People has been attended with a great increaſe of their liberty.

In order to render it equal to ſuch a taſk, the Conſtitution has, in the firſt place, conferred on the King, as we have ſeen before, the excluſive prerogative of calling and diſmiſſing the legiſlative Bodies, and of putting a negative on their reſolutions.

Secondly, it has alſo placed on the ſide of the King the whole Executive Power of the Nation.

Laſtly, in order to effect ſtill nearer an equilibrium, the Conſtitution has inveſted the Man whom it has made the ſole Head of the State, with all the perſonal privileges, all the pomp, all the majeſty, of which human dignities are capable. In the language of the law, the King is Sovereign Lord, and the People are his ſubjects;—he is univerſal proprietor of the whole Kingdom;—he beſtows all the dignities and places;—and he is not to be addreſſed but with the expreſſions and outward ceremony of almoſt Eaſtern humility. Beſides, his perſon is ſacred and inviolable; and any attempt whatſoever againſt it, is, in the eye of the law, a crime equal to that of an attack againſt the whole State.

In a word ſince, to have too exactly completed the equilibrium between the power

of the People, and that of the Crown, would have been to ſacrifice the end to the means, that is, to have endangered liberty with a view to ſtrengthen the Government, the deficiency which ought to remain on the ſide of the Crown, has at leaſt been in appearance made up, by conferring on the King all that ſort of ſtrength that may reſult from the opinion and reverence of the People; and amidſt the agitations which are the unavoidable attendants of liberty, the Royal power, like an anchor that reſiſts both by its weight and the depth of its hold, inſures a salutary ſteadineſs to the veſſel of the State.

The greatneſs of the prerogative of the King, by its thus procuring a great degree of ſtability to the State in general, has much leſſened the poſſibility of the evils we have above deſcribed; it has even, we may ſay, totally prevented them, by rendering it impoſſible for any Citizen ever to riſe to any dangerous greatneſs.

And to begin with an advantage by which the People eaſily ſuffer themſelves to be influenced, I mean that of birth, it is impoſſible for it to produce in England effects in any degree dangerous; for though there are

Lords who, befides their wealth, may alfo boaft of an illuftrious defcent, yet that advantage, being expofed to a continual comparifon with the fplendor of the Throne, dwindles almoft to nothing; and in the gradation univerfally received of dignities and titles, that of Sovereign Prince and King places him who is invefted with it, out of all degree of proportion.

The Ceremonial of the Court of England is even formed upon that principle. Thofe perfons who are related to the King, have the title of Princes of the blood, and, in that quality, an undifputed pre-eminence over all other perfons (*a*). Nay, the firft men in the Nation think it an honourable diftinction to themfelves, to hold the different menial offices, or titles, in his Houfehold. If we therefore were to fet afide the extenfive and real power of the King, as well as the numerous means he poffeffes of gratifying the ambition and hopes of individuals, and were to confider only the Majefty of his title, and that kind of ftrength founded on public opinion, which refults from

(*a*) This, by Stat. of the 31ft of Hen. VIII. extends to the fons, grandfons, brothers, uncles, and nephews, of the reigning King.

it, we ſhould find that advantage ſo conſiderable, that to attempt to enter into a competition with it, with the bare advantage of high birth, which itſelf has no other foundation than public opinion, and that too in a very ſubordinate degree, would be an attempt completely extravagant.

If this difference is ſo great as to be thoroughly ſubmitted to even by thoſe perſons whoſe ſituation might incline them to diſown it, much more does it influence the minds of the People. And if, notwithſtanding the value which every Engliſhman ought to ſet upon himſelf as a Man, and a free Man, there were any whoſe eyes were ſo very tender as to be dazzled by the appearance and the arms of a Lord, they would be totally blinded when they came to turn them towards the Royal Majeſty.

The only Man, therefore, who, to thoſe who are unacquainted with the Conſtitution of England, might at firſt ſight appear in a condition to put the Government in danger, would be a Man who, by the greatneſs of his abilities and public ſervices, might have acquired in a high degree the love of the People, and obtained a great influence in the Houſe of Commons.

But how great ſoever this enthuſiaſm of the public may be, barren applauſe is the only

fruit which the Man whom they favour can expect from it. He can hope neither for a Dictatorſhip, nor a Conſulſhip, nor in general for any power under the ſhelter of which he may at once ſafely unmaſk that ambition with which we might ſuppoſe him to be actuated,— or, if we ſuppoſe him to have been hitherto free from any, grow inſenſibly corrupt. The only door which the Conſtitution leaves open to his ambition, of whatever kind it may be, is a place in the adminiſtration, during the pleaſure of the King. If, by the continuance of his ſervices, and the preſervation of his influence, he becomes able to aim ſtill higher, the only door which again opens to him, is that of the Houſe of Lords.

But this advance of the favourite of the people towards the eſtabliſhment of his greatneſs, is at the ſame time a great ſtep towards the loſs of that power which might render him formidable.

In the firſt place, the People ſeeing that he is become much leſs dependent on their favour, begin, from that very moment, to leſſen their attachment to him. Seeing him moreover diſtinguiſhed by privileges which are the object of their jealouſy, I mean their political jealouſy, and member of a body

whoſe intereſts are frequently oppoſite to theirs, they immediately conclude that this great and new dignity cannot have been acquired but through a ſecret agreement to betray them. Their favourite, thus ſuddenly transformed, is going, they make no doubt, to adopt a conduct entirely oppoſite to that which has till then been the cauſe of his advancement and high reputation, and, in the compaſs of a few hours, completely renounce thoſe principles which he has ſo long and ſo loudly profeſſed. In this certainly the People are miſtaken; but yet neither would they be wrong, if they feared that a zeal hitherto ſo warm, ſo conſtant, I will even add, ſo ſincere, when it concurred with their Favourite's private intereſt, would, by being thenceforth often in oppoſition to it, become gradually much abated.

Nor is this all; the favourite of the People does not even find, in his new-acquired dignity, all the increaſe of greatneſs and eclat that might at firſt be imagined.

Hitherto he was, it is true, only a private individual; but then he was the object in which the whole Nation intereſted themſelves; his actions and words were ſet forth in the public prints; and he every where met with applauſe and acclamation.

All theſe tokens of public favour are, I know, ſometimes acquired very lightly; but they never laſt long, whatever people may ſay, unleſs real ſervices are performed: now, the title of Benefactor to the Nation, when deſerved, and univerſally beſtowed, is certainly a very handſome title, and which does no-wiſe require the aſſiſtance of outward pomp to ſet it off. Beſides, though he was only a Member of the inferior body of the Legiſlature, we muſt obſerve, he was the firſt; and the word *firſt* is always a word of very great moment.

But now that he is made Lord, all his greatneſs, which hitherto was indeterminate, becomes defined. By granting him privileges eſtabliſhed and fixed by known laws, that uncertainty is taken from his luſtre which is of ſo much importance in thoſe things which depend on imagination; and his value is lowered, juſt becauſe it is aſcertained.

Beſides, he is a Lord; but then there are ſeveral men who poſſeſs but ſmall abilities, and few eſtimable qualifications, who alſo are Lords; his lot is, nevertheleſs, to be ſeated among them; the law places him exactly on the ſame level with them; and all that is real in his greatneſs, is thus loſt in a crowd of dignities, hereditary and conventional.

Nor are theſe the only loſſes which the favourite of the People is to ſuffer. Independently of thoſe great changes which he deſcries at a diſtance, he feels around him alterations no leſs viſible, and ſtill more painful.

Seated formerly in the Aſſembly of the Repreſentatives of the People, his talents and continual ſucceſs had ſoon raiſed him above the level of his fellow Members; and, being carried on by the vivacity and warmth of the public favour, thoſe who might have been tempted to ſet up as his competitors, were reduced to ſilence, or even became his ſupporters.

Admitted now into an aſſembly of perſons inveſted with a perpetual and hereditary title, he finds Men hitherto his ſuperiors,—Men who ſee with a jealous eye the ſhining talents of the *homo novus*, and who are firmly reſolved, that after having been the leading Man in the Houſe of Commons, he ſhall not be the firſt in theirs.

In a word, the ſucceſs of the favourite of the People was brilliant, and even formidable; but the Conſtitution, in the very reward it prepares for him, makes him find a kind of Oſtraciſm. His advances were ſudden, and his courſe rapid; he was, if you pleaſe, like a torrent ready to bear down every thing before

it; but this torrent is compelled, by the general arrangement of things, finally to throw itſelf into a vaſt reſervoir, where it mingles, and loſes its force and direction.

I know it may be ſaid, that, in order to avoid the fatal ſtep which is to deprive him of ſo many advantages, the favourite of the People ought to refuſe the new dignity which is offered to him, and wait for more important ſucceſſes, from his eloquence in the Houſe of Commons, and his influence over the People.

But thoſe who give him this counſel, have not ſufficiently examined it. Without doubt there are men in England, who in their preſent purſuit of a project which they think eſſential to the public good, would be capable of refuſing for a while a dignity which would deprive their virtue of opportunities of exerting itſelf, or might more or leſs endanger it: but woe to him who ſhould perſiſt in ſuch a refuſal, with any pernicious deſign! and who, in a Government where liberty is eſtabliſhed on ſo ſolid and extenſive a baſis, ſhould endeavour to make the People believe that their fate depends on the perſevering virtue of a ſingle citizen. His ambitious views being at laſt diſcovered (nor could it be long before they were ſo), his obſtinate reſolu-

tion to move out of the ordinary courſe of things, would indicate aims, on his part, of ſuch an extraordinary nature, that all Men whatever, who have any regard for their country, would inſtantly riſe up from all parts to oppoſe him, and he muſt fall, overwhelmed with ſo much ridicule, that it would be better for him to fall from the Tarpeian rock (*a*).

In fine, even though we were to ſuppoſe that the new Lord might, after his exaltation, have preſerved all his intereſt with the People, or, what would be no leſs difficult, that any Lord whatever could, by dint of his wealth and high birth, rival the ſplendor of the Crown itſelf, all theſe advantages, how great ſoever we may ſuppoſe them, as they

(*a*) The Reader will perhaps object, that no Man in England can poſſibly entertain ſuch views as thoſe I have ſuggeſted here: this is preciſely what I intended to prove. The eſſential advantage of the Engliſh Government above all thoſe that have been called *free*, and which in many reſpects were but apparently ſo, is, that no perſon in England can entertain ſo much as a thought of his ever riſing to the level of the Power charged with the execution of the Laws. All Men in the State, whatever may be their rank, wealth, or influence, are thoroughly convinced that they muſt in reality, as well as in name, continue to be *Subjects*; and are thus compelled really to love, to defend, and to promote thoſe laws which ſecure the liberty of the Subject. This latter obſervation will be again introduced in the ſequel.

would not of themſelves be able to confer on him the leaſt executive authority, muſt for ever remain mere ſhowy unſubſtantial advantages. Finding all the active powers in the State concentered in that very ſeat of power which we ſuppoſe him inclined to attack, and there ſecured by formidable proviſions, his influence muſt always evaporate in ineffectual words; and after having advanced himſelf, as we ſuppoſe, to the very foot of the Throne, finding no branch of independent power which he might appropriate to himſelf, and thus at laſt give a reality to his political importance, he would ſoon ſee it, however great it might have at firſt appeared, decline and die away.

God forbid, however, that I ſhould mean that the People of England are ſo fatally tied down to inaction, by the nature of their Government, that they cannot, in times of oppreſſion, find means of appointing a Leader! No; I only meant to ſay that the laws of England open no door to thoſe accumulations of power, which have been the ruin of ſo many Republics; that they offer to the ambitious no poſſible means of taking advantage of the inadvertence, or even the gratitude, of the People, to make themſelves their Tyrants; and that the public power of which the King has been made

the exclusive depositary, must remain unshaken in his hands, so long as things continue to keep in the legal order; which, it may be observed, is a strong inducement to him constantly to endeavour to maintain them in it (a).

(a) There are several events, in the English History, which put in a very strong light this idea of the stability which the power of the Crown gives to the State.

One, is the facility with which the great Duke of Marlborough, and his party at home, were removed from their several employments. Hannibal, in circumstances nearly similar, had continued the war against the will of the Senate of Carthage: Cæsar had done the same in Gaul; and when at last he was expressly required to deliver up his commission, he marched his army to Rome, and established a military despotism. But the Duke, though surrounded, as well as the above-named Generals, by a victorious army, and by Allies in conjunction with whom he had carried on such a successful war, did not even hesitate to surrender his commission. He knew that all his soldiers were inseparably prepossessed in favour of that Power against which he must have revolted: he knew that the same prepossessions were deeply rooted in the minds of the whole Nation, and that every thing among them concurred to support the same Power: he knew that the very nature of the claims he must have set up, would instantly have made all his Officers and Captains turn themselves against him; and, in short, that in an enterprize of that nature, the arm of the sea he had to repass, was the smallest of the obstacles he would have to encounter.

The other event I shall mention here, is that of the Revolution of 1689. If the long established power of the

CHAP. II.

The Subject concluded.——The Executive Power is more easily confined when it is ONE.

ANOTHER great advantage, and which one would not at firſt expect, in this *unity* of the public power in England,—in this union, and, if I may ſo expreſs myſelf, in this coacervation, of all the branches of the Executive authority, is the greater facility it affords of reſtraining it.

In thoſe States where the execution of the laws is intruſted to ſeveral different hands, and to each with different titles and prerogatives, ſuch diviſion, and the changeableneſs of meaſures which muſt be the conſequence of it, conſtantly hide the true cauſe of the evils of the State: in the endleſs fluctuation of things, no political principles have time

Crown had not beforehand prevented the people from accuſtoming themſelves to fix their eyes on ſome particular Citizens, and in general had not prevented all Men in the State from attaining any too conſiderable degree of power and greatneſs, the expulſion of James II. might have been followed by events ſimilar to thoſe which took place at Rome after the death of Cæſar.

to fix among the People: and public misfortunes happen, without ever leaving behind them any useful lesson.

At some times military Tribunes, and at others, Consuls bear an absolute sway;—sometimes Patricians usurp every thing, and at other times, those who are called Nobles (*a*);—sometimes the People are oppressed by Decemvirs, and at others by Dictators.

Tyranny, in such States, does not always beat down the fences that are set around it; but it leaps over them. When men think it confined to one place, it starts up again in another;—it mocks the efforts of the People, not because it is invincible, but because it is unknown;—seized by the arm of a Hercules, it escapes with the changes of a Proteus.

But the indivisibility of the public power in England has constantly kept the views and efforts of the People directed to one and the same object; and the permanence of that power

(*a*) The capacity of being admitted to all places of public trust, at length gained by the Plebeians, having rendered useless the old distinction between them and the Patricians, a coalition was then effected between the great Plebeians, or Commoners, who got into these places, and the ancient Patricians: Hence a new Class of Men arose, who were called *Nobiles* and *Nobilitas*. These are the words by which Livy, after that period constantly distinguishes those Men and families who were at the head of the State.

has alſo given a permanence and a regularity to the precautions they have taken to reſtrain it.

Conſtantly turned towards that ancient fortreſs, the Royal power, they have made it, for ſeven centuries, the object of their fear; with a watchful jealouſy they have conſidered all its parts—they have obſerved all its outlets—they have even pierced the earth to explore its ſecret avenues, and ſubterraneous works.

United in their views by the greatneſs of the danger, they regularly formed their attacks. They eſtabliſhed their works, firſt at a diſtance; then brought them ſucceſſively nearer; and, in ſhort, raiſed none but what ſerved afterwards as a foundation or defence to others.

After the Great Charter was eſtabliſhed, forty ſucceſſive confirmations ſtrengthened it. The Act called *the Petition of Right*, and that paſſed in the ſixteenth year of Charles the Firſt, then followed: ſome years after, the *Habeas Corpus* Act was eſtabliſhed; and the Bill of Rights made at length its appearance. In fine, whatever the circumſtances may have been, they always had, in their efforts, that ineſtimable advantage of knowing with certainty the general ſeat of the evils they had to defend themſelves againſt; and each calamity, each

particular eruption, by pointing out ſome weak place, has ever gained a new bulwark to public Liberty.

To ſay all in three words; the Executive power in England is formidable, but then it is for ever the ſame; its reſources are vaſt, but their nature is at length known; it has been made the indiviſible and inalienable attribute to one perſon alone; but then all other perſons, of whatever rank or degree, become really intereſted to reſtrain it within its proper bounds (*a*).

CHAP. III.

A ſecond Peculiarity.—The Diviſion of the Legiſlative Power.

THE ſecond peculiarity which England, as an undivided State and a free State, exhibits in its Conſtitution, is the diviſion of its Legiſlature. But in order to make the

(*a*) This laſt advantage of the greatneſs and indiviſibility of the executive power, viz. the obligation it lays upon the greateſt Men in the State, ſincerely to unite in a common cauſe with the people, will be more amply diſcuſſed hereafter, when a more particular compariſon between the Engliſh Government and the Republican form, ſhall be offered to the Reader.

reader more ſenſible of the advantages of this diviſion, it is neceſſary to deſire him to attend to the following conſiderations.

It is, without doubt, abſolutely neceſſary, for ſecuring the Conſtitution of a State, to reſtrain the Executive power; but it is ſtill more neceſſary to reſtrain the Legiſlative. What the former can only do by ſucceſſive ſteps (I mean ſubvert the laws) and through a longer or ſhorter train of enterprizes, the latter does in a moment. As its bare will can give being to the laws; ſo its bare will can alſo annihilate them: and, if I may be permitted the expreſſion, —the Legiſlative power can change the Conſtitution, as God created the light.

In order therefore to inſure ſtability to the Conſtitution of a State, it is indiſpenſably neceſſary to reſtrain the Legiſlative authority. But here we muſt obſerve a difference between the Legiſlative and Executive powers. The latter may be confined, and even is the more eaſily ſo, when undivided: the Legiſlative, on the contrary, in order to its being reſtrained, ſhould abſolutely be divided. For, whatever laws it may make to reſtrain itſelf, they never can be, relatively to it, any thing more than ſimple reſolutions: as thoſe bars which it might erect to ſtop its own motions,

muſt then be within it, and reſt upon it, they can be no bars. In a word, the ſame kind of impoſſibility is found, to fix the Legiſlative power when it is *one*, which Archimedes objected againſt his moving the earth (*a*).

Nor does ſuch a diviſion of the Legiſlature only render it poſſible for it to be reſtrained, ſince each of thoſe parts into which it is divided, can then ſerve as a bar to the motions of the others; but it even makes it to be actually ſo reſtrained. If it has been divided into only two parts, it is probable that they will not in all caſes unite either for *doing*, or *undoing* :—if it has been divided into three parts, the chance that no changes will be made, is thereby greatly increaſed.

Nay more ; as a kind of point of honour will naturally take place between theſe different parts of the Legiſlative, they will therefore be led to offer to each other only ſuch propoſitions as will at leaſt be plauſible ; and all very prejudicial changes will thus be prevented, as it were, before their birth.

If the Legiſlative and Executive powers differ ſo greatly with regard to the neceſſity of their being divided, in order to their being reſtrained, they differ no leſs with regard to the other conſequences ariſing from ſuch diviſion.

(*a*) He wanted a ſpot whereupon to fix his inſtruments.

The diviſion of the Executive power neceſſarily introduces actual oppoſitions, even violent ones, between the different parts into which it has been divided: and that part which in the iſſue ſucceeds ſo far as to abſorb, and unite in itſelf, all the others, immediately ſets itſelf above the laws. But thoſe oppoſitions which take place, and which the public good requires ſhould take place, between the different parts of the Legiſlature, are never any thing more than oppoſitions between contrary opinions and intentions; all is tranſacted in the regions of the underſtanding; and the only contention that ariſes is wholly carried on with thoſe inoffenſive weapons, aſſents and diſſents, *ayes* and *noes*.

Beſides, when one of theſe parts of the Legiſlature is ſo ſucceſsful as to engage the others to adopt its propoſition, the reſult is, that a law takes plaçe, which has in it a great probability of being good: when it happens to be defeated, and ſees its propoſition rejected, the worſt that can reſult from it is, that a law is not made at that time; and the loſs which the State ſuffers thereby, reaches no farther than the temporary ſetting aſide of ſome more or leſs uſeful ſpeculation.

In a word, the reſult of a diviſion of the

Executive power, is either a more or leſs ſpeedy eſtabliſhment of *the right of the ſtrongeſt*, or a continued ſtate of war (*a*) :—that of a diviſion of the Legiſlative power, is either truth, or general tranquillity.

The following maxim will therefore be admitted. That the laws of a State may be permanent, it is requiſite that the Legiſlative power ſhould be divided :—that they may have weight, and continue in force, it is neceſſary that the Executive power ſhould be *one*.

If the reader conceived any doubt as to the truth of the above obſervations, he need only caſt his eyes on the hiſtory of the proceedings of the Engliſh Legiſlature down to our times, to find a proof of them. He would be ſurpriſed to ſee how little variation there has been in the political laws of this Country, eſpecially during the laſt hundred years, though, it is moſt important to obſerve, the Legiſlature has been as it were in a continual

(*a*) Every one knows the frequent hoſtilities that took place between the Roman Senate and the Tribunes. In Sweden there have been continual contentions between the King and the Senate, in which they have overpowered each other by turns. And in England, when the Executive power became double, by the King allowing the Parliament to have a perpetual and independent exiſtence, a civil war almoſt immediately followed.

ſtate of action, and, no diſpaſſionate Man will deny, has generally promoted the public good. Nay, if we except the act paſſed under William III. by which it had been enacted, that Parliaments ſhould ſit no longer than three years, and which was repealed by a ſubſequent Act, under George I. which allowed them to ſit for ſeven years, we ſhall not find that any law, which may really be called Conſtitutional, and which has been enacted ſince the Reſtoration, has been changed afterwards.

Now, if we compare this ſteadineſs of the Engliſh Government with the continual ſubverſions of the Conſtitutional laws of ſome ancient Republics, with the imprudence of ſome of the laws paſſed in their aſſemblies (*a*), and with the ſtill greater inconſiderateneſs with which they ſometimes repealed the moſt ſatutary regulations, as it were the day after they had been enacted,—if we call to mind the extraordinary means to which the Legiſlature of thoſe Republics, at times ſenſible how its very power was prejudicial to itſelf and to the State, was obliged to have recourſe, in

(*a*) The Athenians, among other laws, had enacted one to forbid applying a certain part of the public revenues to any other uſe than the expences of the Theatres and public Shews.

order, if poſſible, to tie its own hands (*a*), we ſhall remain convinced of the great advantages which attend the Conſtitution of the Engliſh Legiſlature (*b*).

Nor is this diviſion of the Engliſh Legiſlature accompanied (which is indeed a very fortunate circumſtance) by any actual diviſion of the Nation; each conſtituent part of it poſſeſſes ſtrength ſufficient to inſure reſpect to its reſolutions, yet no real diviſion has been made of the forces of the State. Only a greater proportional ſhare of all thoſe diſtinctions which are calculated to gain the reverence of the People, has been allotted to thoſe parts of the Legiſlature which could not poſſeſs their

(*a*) In ſome ancient Republics, when the Legiſlature wiſhed to render a certain law permanent, and at the ſame time miſtruſted their own future wiſdom, they added a clauſe to it, which made it death to propoſe the revocation of it. Thoſe who afterwards thought ſuch revocation neceſſary to the public welfare, relying on the mercy of the People, appeared in the public Aſſembly with an halter about their necks.

(*b*) We ſhall perhaps have occaſion to obſerve hereafter, that the true cauſe of the equability of the operations of the Engliſh Legiſlature, is the oppoſition that happily takes place between the different views and intereſts of the ſeveral bodies that compoſe it: a conſideration this, without which all political inquiries are no more than airy ſpeculations, and is the only one that can lead to uſeful practical concluſions.

confidence, in ſo high a degree as the others; and the inequalities in point of real ſtrength between them, have been made up by the magic of dignity.

Thus, the King, who alone forms one part of the Legiſlature, has on his ſide the majeſtyof the Kingly title: the two Houſes are, in appearance, no more than Councils entirely dependent on him; they are bound to follow his perſon; they only meet, as it ſeems, to adviſe him; and never addreſs him but in the moſt ſolemn and reſpectful manner.

As the Nobles, who form the ſecond order of the Legiſlature, bear, in point both of real weight and numbers, no proportion to the body of the People (*a*), they have received

(*a*) It is for want of having duly conſidered this ſubject, that Mr. Rouſſeau exclaims, ſomewhere, againſt thoſe who, when they ſpeak of General Eſtates of France, "dare to "call the People, the *third* Eſtate." At Rome, where all the order we mention was inverted,—where the *faſces* were laid at the feet of the People,—and where the Tribunes whoſe function, like that of the King of England, was to oppoſe the eſtabliſhment of new laws, were only a ſubordinate kind of Magiſtracy, many diſorders followed. In Sweden, and in Scotland (before the union), faults of another kind prevailed: in the former kingdom, for inſtance, an overgrown body of two thouſand Nobles frequently overruled both King and People.

as a compenſation, the advantage of perſonal honours, and of an hereditary title.

Beſides, the eſtabliſhed ceremonial gives to their Aſſembly a great pre-eminence over that of the Repreſentatives of the People. They are the *upper* Houſe, and the others are the *lower* Houſe. They are in a more ſpecial manner conſidered as the King's Council, and it is in the place where they aſſemble that his Throne is placed.

When the King comes to the Parliament, the Commons are ſent for, and make their appearance at the bar of the Houſe of Lords. It is moreover before the Lords, as before their Judges, that the Commons bring their impeachments. When, after paſſing a bill in their own Houſe, they ſend it to the Lords to deſire their concurrence, they always order a number of their own Members to accompany it (*a*): whereas the Lords ſend down their bills to them only by ſome of the Aſſiſtants of their Houſe (*b*). When the nature of the

(*a*) The Speaker of the Houſe of Lords muſt come down from the woolpack to receive the bills which the Members of the Commons bring to their Houſe.

(*b*) The Twelve Judges and the Maſters in Chancery. There is alſo a ceremonial eſtabliſhed with regard to the manner, and marks of reſpect, with which thoſe two of them, who are ſent with a bill to the Commons, are to deliver it.

alterations which one of the two Houfes defires to make in a bill fent to it by the other, renders a conference between them neceffary, the Deputies of the Commons to the Committee, which is then formed of Members of both Houfes, are to remain uncovered. Laftly, thofe bills which (in whichever of the two Houfes they have originated) have been agreed to by both, muft be depofited in the Houfe of Lords, there to remain till the Royal pleafure is fignified.

Befides, the Lords are Members of the Legiflature by virtue of a right inherent in their perfons, and they are fuppofed to fit in Parliament on their own account, and for the fupport of their own interefts. In confequence of this they have the privilege of giving their votes by *proxies* (*a*); and, when any of them diffent from the refolutions of their Houfe, they may enter a proteft againft them, containing the reafons of their particular opinion. In a word, as this part of the Legiflature is deftined frequently to balance the Power of the People, what it could not receive in real ftrength, it has received in outward fplendor and great-

(*a*) The Commons have not that privilege, becaufe they are themfelves *proxies* for the People.—See Coke's Inft. iv. p. 41.

neſs; ſo that, when it cannot reſiſt by its weight, it overawes by its apparent magnitude.

In fine, as theſe various prerogatives by which the component parts of the Legiſlature are thus made to balance each other, are all intimately connected with the fortune of State, and flouriſh and decay according to the viciſſitudes of public proſperity or adverſity, it thence follows, that, though differences of opinions may at ſome times take place between thoſe parts, there can ſcarcely ariſe any, when the general welfare is really in queſtion. And when, to reſolve the doubts that may ariſe on political ſpeculations of this kind, we caſt our eyes on the debates of the two Houſes for a long ſucceſſion of years, and ſee the nature of the laws which have been propoſed, of thoſe which have paſſed, and of thoſe which have been rejected, as well as of the arguments that have been urged on both ſides, we ſhall remain convinced of the goodneſs of the principles on which the Engliſh Legiſlature is formed.

CHAP. IV.

A third Advantage peculiar to the Engliſh Government. The Buſineſs of propoſing Laws, lodged in the Hands of the People.

A Third circumſtance which I propoſe to ſhow to be peculiar to the Engliſh Government, is the manner in which the reſpective offices of the three component parts of the Legiſlature have been divided, and allotted to each of them.

If the reader will be pleaſed to obſerve, he will find, that in moſt of the ancient free States, the ſhare of the People in the buſineſs of Legiſlation, was to approve, or reject, the propoſitions which were made to them, and to give the final ſanction to the laws. The function of thoſe Perſons, or in general thoſe Bodies, who were intruſted with the Executive power, was to prepare and frame the Laws, and then to propoſe them to the People: and in a word, they poſſeſſed that branch of the Legiſlative power which may be called the *initiative*, that is, the prerogative of putting that power in action (*a*)

(*a*) This power of previouſly conſidering and approving ſuch laws as were afterwards to be propounded to

This *initiative*, or exclusive right of proposing, in Legislative assemblies, attributed to the Magistrates, is indeed very useful, and perhaps even necessary, in States of a republican form, for giving a permanence to the laws, as well as for preventing the disorders and struggles for power which have been mentioned before; but upon examination we shall find that this expedient is attended with inconveniences of little less magnitude than the evils it is meant to remedy.

the People was, in the first times of the Roman Republic, constantly exercised by the Senate; laws were made, *Populi jussu, ex auctoritate Senatûs*. Even in cases of elections, the previous approbation and *auctoritas* of the Senate, with regard to those persons who were offered to the suffrages of the People, was required. *Tum enim non gerebat is magistratum qui ceperat, si Patres auctores non erant facti.* Cic. pro Plancio, 3.

At Venice the Senate also exercises powers of the same kind, with regard to the *Grand Council* or Assembly of the Nobles. In the Canton of Bern, all propositions must be discussed in the *Little* Council, which is composed of twenty-seven Members, before they are laid before the Council of the *Two hundred*, in whom resides the sovereignty of the whole Canton. And in Geneva, the law is, "that nothing shall be treated in the *General Council*, or "Assembly of the Citizens, which has not been previously "treated and approved in the Council of the *Two hundred*; and that nothing should be treated in the *Two hundred*, which has not been previously treated and approved in "the Council of the *Twenty-five*."

Theſe Magiſtrates, or Bodies, at firſt indeed apply frequently to the Legiſlature for a grant of ſuch branches of power as they dare not of themſelves aſſume, or for the removal of ſuch obſtacles to their growing authority as they do not yet think it ſafe for them peremptorily to ſet aſide. But when their authority has at length gained a ſufficient degree of extent and ſtability, as farther manifeſtations of the will of the Legiſlature could then only create obſtructions to the exerciſe of their power, they begin to conſider the Legiſlature as an enemy whom they muſt take great care never to rouſe. They conſequently convene the Aſſembly of the People as ſeldom as they can. When they do it, they carefully avoid propoſing any thing favourable to public liberty. Soon they even entirely ceaſe to convene the Aſſembly at all; and the People, after thus loſing the power of legally aſſerting their rights, are expoſed to that which is the higheſt degree of political ruin, the loſs of even the remembrance of them; unleſs ſome indirect means are found by which they may from time to time give life to their dormant privileges; means which may be found, and ſucceed pretty well in ſmall States, where proviſions can more eaſily be made to anſwer their intended

ends, but in States of considerable extent, have always been found, in the event, to give rise to disorders of the same kind with those which were at first intended to be prevented.

But as the capital principle of the English Constitution totally differs from that which forms the basis of Republican Governments, so is it capable of procuring to the People advantages, that are found to be unattainable in the latter. It is the People in England, or at least those who represent them, who possess the *initiative* in Legislation, that is to say, who perform the office of framing laws, and proposing them. And among the many circumstances in the English Government, which would appear entirely new to the Politicians of antiquity, that of seeing the person intrusted with the Executive power bear that share in Legislation which they looked upon as being necessarily the lot of the People, and the People that which they thought the indispensable office of its Magistrates, would not certainly be the least occasion of their surprise.

I foresee that it will be objected, that, as the King of England has the power of dissolving, and even of not calling Parliaments, he is hereby possessed of a prerogative which

in fact is the ſame with that which I have juſt now repreſented as being ſo dangerous.

To this I anſwer, that all circumſtances ought to be combined together. Doubtleſs, if the Crown had been under no kind of dependence whatever on the People, it would long ſince have freed itſelf from the obligation of calling their Repreſentatives together; and the Britiſh Parliament, like the National Aſſemblies of ſeveral other Kingdoms, would moſt likely have no exiſtence now, except in Hiſtory.

But, as we have above ſeen, the neceſſities of the State, and the wants of the Sovereign himſelf, put him under a neceſſity of having frequent recourſe to his Parliament; and then the difference may be ſeen between the prerogative of not calling an Aſſembly, when powerful cauſes nevertheleſs render ſuch a meaſure neceſſary, and the excluſive right, when an Aſſembly is convened, of *propoſing* laws to it.

In the latter caſe, though a Prince, let us even ſuppoſe, in order to ſave appearances, might condeſcend to mention any thing beſides his own wants, it would be at moſt to propoſe the giving up of ſome branch of his prerogative upon which he ſet no value, or to reform ſuch abuſes as his inclination does not lead him to imitate; but he would be very

careful not to touch any points which might materially affect his authority.

Befides, as all his conceffions would be made, or appear to be made, of his own motion, and would in fome meafure feem to fpring from the activity of his zeal for the public welfare, all that he might offer, though in fact ever fo inconfiderable, would be reprefented by him as grants of the moft important nature, and for which he expects the higheft gratitude. Laftly, it would alfo be his province to make reftrictions and exceptions to laws thus propofed by himfelf; he would alfo be the perfon who were to choofe the words to exprefs them, and it would not be reafonable to expect that he would give himfelf any great trouble to avoid all ambiguity (*a*).

(*a*) In the beginning of the exiftence of the Houfe of Commons, bills were prefented to the King under the form of *Petitions*. Thofe to which the King affented were regiftered among the rolls of Parliament, with his anfwer to them; and at the end of each Parliament, the Judges formed them into Statutes. Several abufes having crept into that method of proceeding, it was ordained that the Judges fhould in future make the Statute before the end of every Seffion. Laftly, as even that became, in procefs of time, infufficient, the prefent method of framing bills was eftablifhed; that is to fay, both Houfes now frame the Statutes in the very form and words in which they are to ftand when they have received the Royal affent.

But the Parliament of England is not, as we ſaid before, bound down to wait paſſively, and in ſilence, for ſuch laws as the Executive power may condeſcend to propoſe to them. At the opening of every Seſſion, they of themſelves take into their hands the great book of the State; they open all the pages, and examine every article.

When they have diſcovered abuſes, they proceed to enquire into their cauſes: — when theſe abuſes ariſe from an open diſregard of the laws, they endeavour to ſtrengthen them:— when they proceed from their inſufficiency, they remedy the evil by additional proviſions. (*a*).

(*a*) No popular Aſſembly ever enjoyed the privilege of ſtarting, canvaſſing, and propoſing new matter, to ſuch a degree as the Engliſh Commons. In France, when their General Eſtates were allowed to ſit, their *remonſtrances* were little regarded, and the particular Eſtates of the Provinces dare now hardly preſent any. In Sweden, the power of propoſing new ſubjects was lodged in an Aſſembly called the *Secret Committee*, compoſed of Nobles, and a few of the Clergy; and is now poſſeſſed by the King. In Scotland, until the *Union*, all propoſitions to be laid before the Parliament, were to be framed by the perſons called the *Lords of the Articles*. In regard to Ireland, all bills muſt be prepared by the King in his Privy Council, and are to be laid before the Parliament by the Lord Lieutenant, for their aſſent or diſſent: only, they are allowed to diſcuſs, among them, what they call *Heads of a Bill*, which the Lord

Nor do they proceed with leſs regularity and freedom, in regard to that important object, ſubſidies. They are to be the ſole Judges of the quantity of them, as well as of the ways and means of raiſing them; and they need not come to any reſolution with regard to them, till they ſee the ſafety of the Subject completely provided for. In a word, the making of laws is not, in ſuch an arrangement of things, a *gratuitous* contract, in which the People are to take juſt what is given them, and as it is given them: ——it is a contract in which they *buy* and *pay*, and in which they themſelves ſettle the different conditions, and furniſh the words to expreſs them.

The Engliſh Parliament have given a ſtill greater extent to their advantages on ſo important a ſubject. They have not only ſecured to themſelves a right of propoſing laws and remedies, but they have alſo prevailed

Lieutenant is deſired afterwards to tranſmit to the King, who ſelects out of them what clauſes he thinks proper, or ſets the whole aſide; and is not expected to give, at any time, any preciſe anſwer to them. And in republican Governments, Magiſtrates are never at reſt till they have entirely ſecured to themſelves the important privilege of *propoſing;* nor does this follow merely from their ambition; it is alſo the conſequence of the ſituation they are in, from the principles of that mode of Government.

on the Executive power to renounce all claim to do the ſame. It is even a conſtant rule that neither the King nor his Privy Council can make any amendments to the bills preferred by the two Houſes; but the King is merely to accept or reject them: a proviſion this, which, if we pay a little attention to the ſubject, we ſhallfind to have been alſo neceſſary for completely ſecuring the freedom and regularity of the parliamentary deliberations (*a*).

I indeed confeſs that it ſeems very natural, in the modelling of a State, to intruſt this very important office of framing laws, to

(*a*) The King indeed at times ſends meſſages to either Houſe; and nobody, I think, can wiſh that no means of intercourſe ſhould exiſt between him and his Parliament. But theſe meſſages are always expreſſed in very general words: they are only made to deſire the Houſe to take certain ſubjects into their conſideration; no particular articles or clauſes are expreſſed; the Commons are not to declare, at any ſettled time, any ſolemn acceptation or rejection of the propoſition made by the King; and, in ſhort, the Houſe follows the ſame mode of proceeding, with reſpect to ſuch meſſages, as they uſually do in regard to petitions preſented by private individuals. Some Member makes a motion upon the ſubject expreſſed in the King's meſſage; a bill is framed in the uſual way; it may be dropt at every ſtage of it; and it is never the propoſal of the Crown, but the motions of ſome of their own Members, which the Houſe diſcuſs, and finally accept or reject.

thoſe perſons who may be ſuppoſed to have before acquired experience and wiſdom, in the management of public affairs. But events have unfortunately demonſtrated, that public employments and power improve the underſtanding of Men in a leſs degree than they pervert their views; and it has been found in the iſſue that the effect of a regulation which, at firſt ſight, ſeems ſo perfectly conſonant with prudence, is to confine the People to a mere paſſive and defenſive ſhare in Legiſlation, and to deliver them up to the continual enterprizes of thoſe who, at the ſame time that they are under the greateſt temptations to deceive them, poſſeſs the moſt powerful means of effecting it.

If we caſt our eyes on the Hiſtory of the ancient Governments, in thoſe times when the perſons entruſted with the Executive power were ſtill in a ſtate of dependence on the Legiſlature, and conſequently frequently obliged to have recourſe to it, we ſhall ſee almoſt continual inſtances of ſelfiſh and inſidious laws propoſed by them to the Aſſemblies of the people.

And thoſe Men in whoſe wiſdom the law had at firſt placed ſo much confidence, became, in the iſſue, ſo loſt to all ſenſe of ſhame and duty, that when arguments were found to be no longer ſufficient, they had

recourfe to force; the legiflative Affemblies became fo many fields of battle, and their power, a real calamity.

I know very well, however, that there are other important circumftances befides thofe I have juft mentioned, which would prevent diforders of this kind from taking place in England (*a*). But, on the other hand, let us call to mind that the perfon who, in England, is invefted with the executive authority, unites in himfelf the whole public power and majefty. Let us reprefent to ourfelves the great and fole Magiftrate of the Nation, preffing the acceptance of thofe laws which he had propofed, with a vehemence fuited to the ufual importance of his defigns, with the warmth of Monarchical pride, which muft meet with no refufal, and exerting for that purpofe all his immenfe refources.

It was therefore a matter of indifpenfable neceffity, that things fhould be fettled in England in the manner they are. As the moving fprings of the Executive power are, in the hands of the King, a kind of facred *depofitum*, fo

(*a*) I particularly mean here, the circumftance of the People having entirely delegated their power to their Reprefentatives: the confequences of which Inftitution will be difcuffed in the next chapter.

are thoſe of the Legiſlative Power in the hands of the two Houſes. The King muſt abſtain from touching them, in the ſame manner as all the ſubjects of the kingdom are bound to ſubmit to his prerogatives. When he ſits in Parliament, he has left, we may ſay, his executive power without doors, and can only aſſent or diſſent. If the Crown had been allowed to take an active part in the buſineſs of making laws, it would ſoon have rendered uſeleſs the other branches of the Legiſlature.

CHAP. V.

In which an Inquiry is made, whether it would be an Advantage to public Liberty, that the Laws ſhould be enacted by the Votes of the People at large.

BUT it will be ſaid, whatever may be the wiſdom of the Engliſh Laws, how great ſoever their precautions may be with regard to the ſafety of the individual, the People, as they do not themſelves expreſsly enact them, cannot be looked upon as a free People. The Author of the *Social Contract* carries this

opinion even farther ; he ſays, that, " though " the people of England think they are free, " they are much miſtaken ; they are ſo only " during the election of Members for Par- " liament : as ſoon as theſe are elected, the " People are ſlaves—they are nothing (*a*)."

Before I anſwer this objection, I ſhall obſerve, that the word *Liberty* is one of thoſe which have been moſt miſunderſtood or miſapplied.

Thus, at Rome, where that claſs of Citizens who were really Maſters of the State, were ſenſible that a lawful regular authority, once truſted to a ſingle Ruler, would put an end to their tyranny, they taught the People to believe, that, provided thoſe who exerciſed a military power over them, and overwhelmed them with inſults, went by the names of *Conſules*, *Dictatores*, *Patricii*, *Nobiles*, in a word, by any other appellation than that horrid one of *Rex*, they were free, and that ſuch a valuable ſituation muſt be preferred at the price of every calamity.

In the ſame manner, certain Writers of the preſent age, miſled by their inconſiderate admiration of the Governments of ancient

(*a*) See M. Rouſſeau's Social Contract, chap. xv.

times, and perhaps alſo by a deſire of preſenting lively contraſts to what they call the degenerate manners of our modern times, have cried up the governments of Sparta and Rome, as the only ones fit for us to imitate. In their opinions, the only proper employment of a free Citizen is, *to be either inceſſantly aſſembled in the forum*, or *preparing for war.*—*Being valiant, inured to hardſhips, inflamed with an ardent love of one's Country,* which is, after all, nothing more than an ardent deſire of injuring all Mankind for the ſake of that Society of which we are Members—*and with an ardent love of glory*, which is likewiſe nothing more than an ardent deſire of committing ſlaughter, in order to make afterwards a boaſt of it, have appeared to theſe Writers to be the only ſocial qualifications worthy of our eſteem, and of the encouragement of law-givers (*a*). And while, in order to ſupport ſuch opinions, they have uſed a profuſion of exaggerated expreſſions without any diſtinct meaning, and perpetually repeated, though without defining them, the words *daſtardlineſs*, *corruption*, *greatneſs of*

(*a*) I have uſed all the above expreſſions in the ſame ſenſe in which they were uſed in the ancient Commonwealths, and ſtill are by moſt of the Writers who deſcribe their Governments.

soul, and *virtue*, they have never once thought of telling us the only thing that was worth our knowing, which is, whether men were happy under thoſe Governments which they ſo much exhorted us to imitate.

Nor, while they thus miſapprehended the only rational deſign of civil Societies, have they better underſtood the true end of the particular inſtitutions by which they were to be regulated. They were ſatisfied when they ſaw the few who really governed every thing in the State, at times perform the illuſory ceremony of aſſembling the body of the People, that they might appear to conſult them: and the mere giving of votes, under any diſadvantage in the manner of giving them, and how much ſoever the law might afterwards be neglected that was thus pretended to have been made in common, has appeared to them to be Liberty.

But thoſe Writers are in the right: a Man who contributes by his vote to the paſſing of a law, has himſelf made the law; in obeying it, he obeys himſelf,—he therefore is free. A play on words, and nothing more. The individual who has voted in a popular legiſlative Aſſembly, has not

made the law that has paſſed in it; he has only contributed, or ſeemed to contribute, towards enacting it, for his thouſandth, or even ten thouſandth ſhare: he has had no opportunity of making his objections to the propoſed law, or of canvaſſing it, or of propoſing reſtrictions to it, and he has only been allowed to expreſs his aſſent or diſſent. When a law is paſſed agreeably to his vote, it is not as a conſequence of this his vote, that his will happens to take place; it is becauſe a number of other Men have accidentally thrown themſelves on the ſame ſide with him:—when a law contrary to his intentions is enacted, he muſt nevertheleſs ſubmit to it.

This is not all; for though we ſhould ſuppoſe that to give a vote is the eſſential conſtituent of liberty, yet, ſuch liberty could only be ſaid to laſt for a ſingle moment, after which it becomes neceſſary to truſt entirely to the diſcretion of other perſons, that is, according to this doctrine, to be no longer free. It becomes neceſſary, for inſtance, for the Citizen who has given his vote, to rely on the honeſty of thoſe who collect the ſuffrages; and more than once have falſe declarations been made of them.

The Citizen muſt alſo truſt to other perſons for the execution of thoſe things which have been reſolved upon in common: and when the Aſſembly ſhall have ſeparated, and he ſhall find himſelf alone, in the preſence of the Men who are inveſted with the public power, of the Conſuls, for inſtance, or of the Dictator, he will have but little ſecurity for the continuance of his liberty, if he has only that of having contributed by his ſuffrage towards enacting a law which they are determined to neglect.

What then is Liberty? Liberty, I would anſwer, ſo far as it is poſſible for it to exiſt in a Society of Beings whoſe intereſts are almoſt perpetually oppoſed to each other, conſiſts in this, that, *every Man, while he reſpects the perſons of others, and allows them quietly to enjoy the produce of their induſtry, be certain himſelf likewiſe to enjoy the produce of his own induſtry, and that his perſon be alſo ſecure.* But to contribute by one's ſuffrage to procure theſe advantages to the Community,—to have a ſhare in eſtabliſhing that order, that general arrangement of things, by means of which an individual, loſt as it were in the crowd, is effectually protected,—to lay down the rules to be obſerved by thoſe

who, being inveſted with a conſiderable power, are charged with the defence of individuals, and provide that they ſhould never tranſgreſs them, — theſe are functions, are acts of Government, but not conſtituent parts of Liberty.

To expreſs the whole in two words: — To concur by one's ſuffrage in enacting laws, is to enjoy a ſhare, whatever it may be, of Power: to live in a ſtate where the laws are equal for all, and ſure to be executed (whatever may be the means by which theſe advantages are attained) is to be free.

Be it ſo: we grant that to give one's ſuffrage is not liberty itſelf, but only a means of procuring it, and a means too which may degenerate to mere form; we grant alſo, that it is poſſible that other expedients might be found for that purpoſe, and that, for a Man to decide that a State with whoſe Government and interior adminiſtration he is unacquainted, is a State in which the People *are ſlaves, are nothing*, merely becauſe the *Comitia* of ancient Rome are no longer to be met with in it, is a ſomewhat precipitate deciſion. But ſtill we muſt continue to think, that liberty would be much more complete, if the People at large were expreſsly called upon to

give their opinion concerning the particular provisions by which it is to be secured, and that the English laws, for instance, if they were made by the suffrages of all, would be wiser, more equitable, and, above all, more likely to be executed. To this objection, which is certainly specious, I shall endeavour to give an answer.

If, in the first formation of a civil Society, the only care to be taken was that of establishing, once for all, the several duties which every individual owes to others, and to the State,—if those who are intrusted with the care of procuring the performance of these duties, had neither any ambition, nor any other private passions, which such employment might put in motion, and furnish the means of gratifying: in a word, if looking upon their function as a mere task of duty, they were never tempted to deviate from the intentions of those who had appointed them; I confess that in such a case, there might be no inconvenience in allowing every individual to have a share in the government of the community of which he is a member; or rather I ought to say, in such a Society, and among such Beings, there would be no occasion for any Government.

But experience teaches us that many more precautions, indeed, are neceſſary to oblige Men to be juſt towards each other; nay, the very firſt expedients that may be expected to conduce to ſuch an end, ſupply the moſt fruitful ſource of the evils which are propoſed to be prevented. Thoſe laws which were intended to be equal for all, are ſoon warped to the private convenience of thoſe who have been made the adminiſtrators of them:—inſtituted at firſt for the protection of all, they ſoon are made only to defend the uſurpations of a few; and as the People continue to reſpect them, while thoſe to whoſe guardianſhip they were intruſted make little account of them, they at length have no other effect than that of ſupplying the want of real ſtrength in thoſe few who have contrived to place themſelves at the head of the community, and of rendering regular and free from danger the tyranny of the ſmaller number over the greater.

To remedy, therefore, evils which thus have a tendency to reſult from the very nature of things,—to oblige thoſe who are in a manner Maſters of the law, to conform themſelves to it,—to render ineffectual the ſilent, powerful, and never active conſpiracy of thoſe who govern, requires a degree of knowledge,

and a ſpirit of perſeverance, which are not to be expected from the multitude.

The greater part of thoſe who compoſe this multitude, taken up with the care of providing for their ſubſiſtence, have neither ſufficient leiſure, nor even, in conſequence of their more imperfect education, the degree of information requiſite for functions of this kind. Nature, beſides, who is ſparing of her gifts, has beſtowed upon only a few Men an underſtanding capable of the complicated reſearches of Legiſlation; and, as a ſick Man truſts to his Phyſician, a Client to his Lawyer, ſo the greater number of the Citizens muſt truſt to thoſe who have more abilities than themſelves for the execution of things which, at the ſame time that they ſo materially concern them, require ſo many qualifications to perform them with any degree of ſufficiency.

To theſe conſiderations, of themſelves ſo material, another muſt be added, which is if poſſible of ſtill greater weight. This is, that the multitude, in conſequence of their very being a multitude, are incapable of coming to any mature reſolution.

Thoſe who compoſe a popular Aſſembly are not actuated, in the courſe of their de-

liberations, by any clear and precife view of any prefent or pofitive perfonal intereft. As they fee themfelves loft as it were in the crowd of thofe who are called upon to exercife the fame function with themfelves, as they know that their individual votes will make no change in the public refolution, and that to whatever fide they may incline, the general refult will neverthelefs be the fame, they do not undertake to enquire how far the things propofed to them agree with the whole of the law already in being, or with the prefent circumftances of the State, becaufe Men will not enter upon a laborious tafk, when they know that it can fcarcely anfwer any purpofe.

It is, however, with difpofitions of this kind, and each relying on all, that the Affembly of the People meets. But as very few among them have previoufly confidered the fubjects on which they are called upon to determine, very few carry along with them any opinion or inclination, or at leaft any inclination of their own, and to which they are refolved to adhere. As however it is neceffary at laft to come to fome refolution, the major part of them are determined by reafons which they would blufh to pay any regard to, on much lefs fe-

rious occasions. An unusual sight, a change of the ordinary place of the Assembly, a sudden disturbance, a rumour, are, amidst the general want of a spirit of decision, the *sufficiens ratio* of the determination of the greatest part (*a*); and from this assemblage of separate wills, thus formed hastily and without reflection, a general will results, which is also void of reflection.

If, amidst these disadvantages, the Assembly were left to themselves, and no body had an interest to lead them into error, the evil, though very great, would not however be extreme, because such an assembly never being called upon but to determine upon an affirmative or negative, that is, never having but two cases to choose between, there would be an equal chance for their choosing either; and it might be hoped that at every other turn they would take the right side.

But the combination of those who share either in the actual exercise of the public Power,

(*a*) Every one knows of how much importance it was in the Roman Commonwealth, to assemble the People, in one place rather than another. In order to change entirely the nature of their resolutions, it was often sufficient to hide from them, or let them see, the Capitol.

or in its advantages, do not thus allow themſelves to ſit down in inaction. They wake, while the People ſleep. Entirely taken up with the thoughts of their own power, they live but to increaſe it. Deeply verſed in the management of public buſineſs, they ſee at once all the poſſible conſequences of meaſures. And as they have the excluſive direction of the ſprings of Government, they give riſe, at their pleaſure, to every incident that may influence the minds of a multitude who are not on their guard, and who wait for ſome event or other that may finally determine them.

It is they who convene the Aſſembly, and diſſolve it; it is they who offer propoſitions, and make ſpeeches to it. Ever active in turning to their advantage every circumſtance that happens, they equally avail themſelves of the tractableneſs of the People during public calamities, and its heedleſſneſs in times of proſperity. When things take a different turn from what they expected, they diſmiſs the Aſſembly. By preſenting to it many propoſitions at once, and which are to be voted upon in the lump, they hide what is deſtined to promote their own private views, or give a colour to it, by joining it with things which they know will take hold of the mind

of the People (*a*). By presenting in their speeches, arguments and facts, which Men have no time to examine, they lead the People into gross, and yet decisive errors; and the common-places of rhetoric, supported by their personal influence, ever enable them to draw to their side the majority of votes.

On the other hand, the few (for there are, after all, some) who, having meditated on the proposed question, see the consequences of the decisive step which is just going to be taken, being lost in the crowd, cannot make their feeble voices to be heard in the midst of the universal noise and confusion. They have it no more in their power to stop the general motion, than a Man in the midst of an army on a march, has it in his power to avoid marching. In the mean time the People are giving their suffrages; a majority

(*a*) It was thus the Senate, at Rome, assumed to itself the power of laying taxes. They promised, in the time of the war against the Veientes, to give pay to such Citizens as would inlist: and to that end they establish a tribute. The people, solely taken up with the idea of not going to war at their own expence, were transported with so much joy, that they crowded at the door of the Senate, and laying hold of the hands of the Senators, called them their Fathers.—*Nihil unquam acceptum à plebe tanto gaudio traditur: concursum itaque Curiam esse, prehensatasque exeuntium manus, Patres vere appellatos, &c.* See Tit. Liv. book iv.

appears in favour of the propoſal; it is finally proclaimed as the general will of all; and it is at bottom nothing more than the effect of the artifices of a few deſigning Men, who are exulting among themſelves (a).

(a) I might confirm all theſe things by numberleſs inſtances from ancient Hiſtory; but, if I may be allowed, in this caſe, to draw examples from my own Country, & *celebrare domeſtica facta*, I ſhall relate facts which will be no leſs to the purpoſe. In Geneva, in the year 1707, a law was enacted, that a General Aſſembly of the People ſhould be held every five years, to treat of the affairs of the Republic; but the Magiſtrates, who dreaded thoſe Aſſemblies, ſoon obtained from the Citizens themſelves the repeal of the law; and the firſt reſolution of the People, in the firſt of theſe periodical Aſſemblies (in the year 1712) was to aboliſh them for ever. The profound ſecrecy with which the Magiſtrates prepared their propoſal to the Citizens on that ſubject, and the ſudden manner in which the latter, when aſſembled, were acquainted with it, and made to give their votes upon it, have indeed accounted but imperfectly for this ſtrange determination of the People; and the conſternation which ſeized the whole Aſſembly when the reſult of the ſuffrages was proclaimed, has confirmed many in the opinion that ſome unfair means had been uſed. The whole tranſaction has been kept ſecret to this day; but the common opinion on this ſubject, which has been adopted by M. Rouſſeau in his *Lettres de la Montagne*, is this: the Magiſtrates, it is ſaid, had privately inſtructed the Secretaries in whoſe *ears* the Citizens were to *whiſper* their ſuffrages: when a Citizen ſaid, *approbation*, he was underſtood to approve the propoſal of the Magiſtrates; when he ſaid, *rejection*, he was underſtood to reject the *periodical Aſſemblies*.

In a word, thoſe who are acquainted with Republican Governments, and, in general, who know the manner in which buſineſs is tranſacted in numerous Aſſemblies, will not ſcruple to affirm, that the few who are united together, who take an active part in public

In the year 1738, the Citizens enacted at once into laws a ſmall Code of forty-four Articles, by one ſingle line of which they bound themſelves for ever to elect the four *Syndics* (the Chiefs of the Council of the Twenty-five) out of the Members of the ſame Council; whereas they were before free in their choice. They at that time ſuffered alſo the word *approved* to be ſlipped into the law mentioned in the Note (*a*) p. 185, which was tranſcribed from a former Code; the conſequence of which was to render the Magiſtrates abſolute maſters of the Legiſlature.

The Citizens had thus been ſucceſſively ſtripped of all their *political* rights, and had little more left to them than the pleaſure of being called a *Sovereign Aſſembly*, when they met (which idea, it muſt be confeſſed, preſerved among them a ſpirit of reſiſtance which it would have been dangerous for the Magiſtrates to provoke too far), and the power of at leaſt *refuſing* to elect the four *Syndics*. Upon this privilege the Citizens have, a few years ago (A. 1765, to 1768), made their laſt ſtand: and a ſingular conjunction of circumſtances having happened at the ſame time, to raiſe and preſerve among them, during three years, an uncommon ſpirit of union and perſeverance, they have in the iſſue ſucceeded in a great meaſure to repair the injuries which they had been made to do to themſelves, for theſe laſt two hundred years and more. (*A total change has ſince that time been effected by foreign forces, in the Government of the Republic* (A. 1782), *upon which this is not a proper place to make any obſervation.*)

affairs, and whoſe ſtation makes them conſpicuous, have ſuch an advantage over the many who turn their eyes towards them, and are without union among themſelves, that, even with a middling degree of ſkill, they can at all times direct, at their pleaſure, the general reſolutions;—that, as a conſequence of the very nature of things, there is no propoſal, however abſurd, to which a numerous aſſembly of Men may not, at one time or other, be brought to aſſent;—and that laws would be wiſer, and more likely to procure the advantage of all, if they were to be made by drawing lots, or caſting dice, than by the ſuffrages of a multitude.

CHAP. VI.

Advantages that accrue to the People from appointing Repreſentatives.

HOW then ſhall the People remedy the diſadvantages that neceſſarily attend their ſituation? How ſhall they reſiſt the phalanx of thoſe who have engroſſed to themſelves all the honours, dignities, and power in the State?

It will be by employing for their defence the ſame means by which their adverſaries carry on their attack: it will be by uſing the ſame weapons as they do, the ſame order, the ſame kind of diſcipline.

They are a ſmall number, and conſequently eaſily united ;— a ſmall number muſt therefore be oppoſed to them, that a like union may alſo be obtained. It is becauſe they are a ſmall number, that they can deliberate on every occurrence, and never come to any reſolutions but ſuch as are maturely weighed—it is becauſe they are few, that they can have forms which continually ſerve them for general ſtandards to reſort to, approved maxims to which they invariably adhere, and plans which they never loſe ſight of :—here, therefore, I repeat it, oppoſe to them a ſmall number, and you will obtain the like advantages.

Beſides, thoſe who govern, as a farther conſequence of their being few, have a more conſiderable ſhare, conſequently feel a deeper concern in the ſucceſs, whatever it may be, of their enterprizes. As they uſually profeſs a contempt for their adverſaries, and are at all times acting an offenſive part againſt them, they impoſe on themſelves an obligation of conquering. They, in ſhort, who are all alive from the moſt powerful incentives, and aim at gaining new advantages, have to do with a multitude, who, wanting only to preſerve what they already poſſeſs, are unavoidably liable to long intervals of inactivity and

ſupineneſs. But the People, by appointing Repreſentatives, immediately gain to their cauſe that advantageous activity which they before ſtood in need of, to put them on a par with their adverſaries; and thoſe paſſions become excited in their defenders by which they themſelves cannot poſſibly be actuated.

Excluſively charged with the care of public liberty, the Repreſentatives of the People will be animated by a ſenſe of the greatneſs of the concerns with which they are intruſted. Diſtinguiſhed from the bulk of the Nation, and forming among themſelves a ſeparate Aſſembly, they will aſſert the rights of which they have been made the Guardians, with all that warmth which the *eſprit de corps* is uſed to inſpire (*a*). Placed on an elevated theatre, they will endeavour to render themſelves ſtill more conſpicuous; and the arts and ambitious activity of thoſe who govern, will now be encountered by the vivacity and perſeverance of opponents actuated by the love of glory.

(*a*) If it had not been for an incentive of this kind, the Engliſh Commons would not have vindicated their right of taxation with ſo much vigilance as they have done, againſt all enterprizes, often perhaps involuntary, of the Lords.

Laſtly, as the Repreſentatives of the People will naturally be ſelected from among thoſe Citizens who are moſt favoured by fortune, and will have conſequently much to preſerve, they will, even in the midſt of quiet times, keep a watchful eye on the motions of Power. As the advantages they poſſeſs, will naturally create a kind of rivalſhip between them and thoſe who govern, the jealouſy which they will conceive againſt the latter, will give them an exquiſite degree of ſenſibility on every increaſe of their authority. Like thoſe delicate inſtruments which diſcover the operations of Nature, while they are yet imperceptible to our ſenſes, they will warn the People of thoſe things which of themſelves they never ſee but when it is too late; and their greater proportional ſhare, whether of real riches, or of thoſe which lie in the opinions of Men, will make them, if I may ſo expreſs myſelf, the barometers that will diſcover, in its firſt beginning, every tendency to a change in the Conſtitution (*a*).

(*a*) All the above reaſoning eſſentially requires that the Repreſentatives of the People ſhould be united in intereſt with the People. We ſhall ſoon ſee that this union really obtains in the Engliſh Conſtitution, and may be called the maſter-piece of it.

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CHAP. VII.

The Subject continued—The Advantages that accrue to the People from their appointing Representatives, are very inconſiderable, unleſs they alſo entirely truſt their Legiſlative Authority to them.

THE obſervations made in the preceding Chapter are ſo obvious, that the People themſelves, in popular Governments, have alway been ſenſible of the truth of them, and never thought it poſſible to remedy, by themſelves alone, the diſadvantages neceſſarily attending their ſituation. Whenever the oppreſſions of their Rulers have forced them to reſort to ſome uncommon exertion of their legal powers, they have immediately put themſelves under the direction of thoſe few Men who had been inſtrumental in informing and encouraging them; and when the nature of the circumſtances has required any degree of firmneſs and perſeverance in their conduct, they have never been able to attain the ends they propoſed to themſelves, except by means of the moſt implicit deference to thoſe Leaders whom they had thus appointed.

But as these Leaders, thus hastily chosen, are easily intimidated by the continual display which is made before them of the terrors of Power, as that unlimited confidence which the People now repose in them, only takes place when public liberty is in the utmost danger, and cannot be kept up otherwise than by an extraordinary conjunction of circumstances, and in which those who govern seldom suffer themselves to be caught more than once, the People have constantly sought to avail themselves of the short intervals of superiority which the chance of events had given them, for rendering durable those advantages which they knew would, of themselves, be but transitory, and for getting some persons appointed, whose peculiar office it may be to protect them, and whom the Constitution shall thenceforwards recognize. Thus it was that the People of Lacedæmon obtained their Ephori, and the People of Rome their Tribunes.

We grant this, will it be said; but the Roman People never allowed their Tribunes *to conclude any thing definitively*; they, on the contrary, reserved to themselves the right of *ratifying* (*a*) any Resolutions the latter should take. This, I answer, was the very circum-

(*a*) See M. Rousseau's Social Contract.

ſtance that rendered the inſtitution of Tribunes totally ineffectual in the event. The People thus wanting to interfere with their own opinions, in the reſolutions of thoſe on whom they had, in their wiſdom, determined entirely to rely, and endeavouring to ſettle with an hundred thouſand votes, things which would have been ſettled equally well by the votes of their adviſers, defeated in the iſſue every beneficial end of their former proviſions; and while they meant to preſerve an appearance of their ſovereignty (a chimerical appearance, ſince it was under the direction of others that they intended to vote), they fell back into all thoſe inconveniences which we have before mentioned.

The Senators, the Conſuls, the Dictators, and the other great Men in the Republic, whom the People were prudent enough to fear, and ſimple enough to believe, continued ſtill to mix with them, and play off their political artifices. They continued to make ſpeeches to them (*a*), and ſtill availed them-

(*a*) Valerius Maximus relates that the Tribunes of the People having offered to propoſe ſome regulations in regard to the price of corn, in a time of great ſcarcity, Scipio Naſica over-ruled the Aſſembly merely by ſaying, "Silence, Romans; I know better than you what is "expedient for the Republic. Which words were no "ſooner heard by the People, than they ſhewed, by a

ſelves of their privilege of changing at their pleaſure the place and form of the public meetings. When they did not find it poſſible by ſuch means to direct the reſolutions of the Aſſemblies, they pretended that the omens were not favourable, and under this pretext, or others of the ſame kind, they diſſolved them (*a*). And the Tribunes, when they had ſucceeded ſo far as to effect an union among themſelves, thus were obliged to ſubmit to the pungent mortification of ſeeing thoſe projects which they had purſued with infinite labour, and even through the greateſt dangers, irrecoverably defeated by the moſt deſpicable artifices.

When, at other times, they ſaw that a confederacy was carrying on with uncommon warmth againſt them, and deſpaired of ſuc-

" ſilence full of veneration, that they were more affected " by his authority, than by the neceſſity of providing for " their own ſubſiſtence." *Tacete, quæſo, Quirites. Plus enim ego quam vos quid reipublicæ expediat intelligo. Quâ voce auditâ, omnes, pleno venerationis ſilentio, majorem ejus autoritatis quam alimentorum ſuorum curam egerunt.*

(*a*) *Quid enim majus eſt, ſi de jure Augurum quærimus,* ſays Tully, who himſelf was an Augur and a Senator into the bargain, *quàm poſſe a ſummis imperiis & ſummis poteſtatibus Comitatus & Concilia, vel inſtituta dimittere, vel habita reſcindere! Quid gravius, quam rem ſuſceptam dirimi, ſi unus Augur* ALIUM (id eſt, alium diem) *dixerit!* See De Legib. lib. ii. § 12.

ceeding by employing expedients of the above kind, or were afraid of diminiſhing their efficacy by a too frequent uſe of them, they betook themſelves to other ſtratagems. They then conferred on the Conſuls, by the means of a ſhort form of words for the occaſion (*a*), an abſolute power over the lives of the Citizens, or even appointed a Dictator. The People, at the ſight of the State maſquerade which was diſplayed before them, were ſure to ſink into a ſtate of conſternation; and the Tribunes, however clearly they might ſee through the artifice, alſo trembled in their turn, when they thus beheld themſelves left without defenders (*b*).

At other times, they brought falſe accuſations againſt the Tribunes before the Aſſembly itſelf; or by privately ſlandering them with the People, they totally deprived them of their confidence. It was through artifices of this kind, that the People were brought to behold, without concern, the murder of Tiberius

(*a*) *Videat Conſul ne quid detrimenti Reſpublica capiat.*

(*b*) "The Tribunes of the People," ſays Livy, who was a great admirer of the Ariſtocratical power, "and "the People themſelves, durſt neither lift up their eyes, "nor even mutter, in the preſence of the Dictator." *Nec adverſus Dictatoriam vim, aut Tribuni plebis aut ipſa Plebs, attollere oculos, aut hiſcere, audebant.*—See Tit. Liv. lib. vi. § 16.

Gracchus, the only Roman that was really virtuous,—the only one who truly loved the People. It was alſo in the ſame manner that Caius, who was not deterred by his brother's fate from purſuing the ſame plan of conduct, was in the end ſo entirely forſaken by the People, that nobody could be found among them who would even lend him a horſe to fly from the fury of the Nobles; and he was at laſt compelled to lay violent hands upon himſelf, while he invoked the wrath of the Gods on his inconſtant fellow-citizens.

At other times, they raiſed diviſions among the People. Formidable combinations broke out, on a ſudden, on the eve of important tranſactions; and all moderate Men avoided attending Aſſemblies, where they ſaw that all was to be tumult and confuſion.

In fine, that nothing might be wanting to the inſolence with which they treated the Aſſemblies of the People, they ſometimes falſified the declarations of the number of the votes; they even once went ſo far as to carry off the urns into which the Citizens were to throw their ſuffrages (*a*).

(*a*) The reader with reſpect to all the above obſervations, may ſee Plutarch's Lives, particularly the Lives of the two Gracchi. I muſt add, that I have avoided

CHAP. VIII.

The Subject concluded.—Effects that have resulted in the English Government, from the People's Power being completely delegated to their Representatives.

BUT when the People have entirely trusted their power to a moderate number of persons, affairs immediately take a widely different turn. Those who govern are from that moment obliged to leave off all those stratagems which had hitherto ensured their success. Instead of those Assemblies which they affected to despise, and were perpetually comparing to storms, or to the current of the *Euripus* (*a*),

drawing any instance from those Assemblies in which one half of the People were made to arm themselves against the other. I have here only alluded to those times which immediately either preceded or followed the third Punic war, that is, of those which are commonly called the *best period* of the Republic.

(*a*) Tully makes no end of his similies on this subject. *Quod enim fretum, quem Euripum, tot motus, tantas et tam varias habere putatis agitationes fluctum, quantas perturbationes & quantos æstus habet ratio Comitiorum?* See Orat. pro Muræna.—*Concio*, says he in another place, *quæ ex imperitissimis constat*, &c. De Amicitiâ, § 25.

and in regard to which they accordingly thought themſelves at liberty to paſs over the rules of Juſtice, they now find that they have to deal with Men who are their equals in point of education and knowledge, and their inferiors only in point of rank and form. They, in conſequence, ſoon found it neceſſary to adopt quite different methods; and, above all, become very careful not to talk to them any more about the ſacred chickens, the *white* or *black* days, and the Sibylline books.—As they ſee their new adverſaries expect to have a proper regard paid to them, that ſingle circumſtance inſpires them with it:—as they ſee them act in a regular manner, obſerve conſtant rules, in a word, proceed with *form*, they come to look upon them with reſpect, from the very ſame reaſon which makes them themſelves to be reverenced by the People.

The Repreſentatives of the People, on the other hand, do not fail ſoon to procure for themſelves every advantage that may enable them effectually to uſe the powers with which they have been entruſted, and to adopt every rule of proceeding that may make their reſolutions to be truly the reſult of reflection and deliberation. Thus it was that the Repreſentatives of the Engliſh Nation, ſoon after their

firſt eſtabliſhment, became formed into a ſeparate Aſſembly: they afterwards obtained the liberty of appointing a Preſident:—ſoon after, they inſiſted upon their being conſulted on the laſt form of the Acts to which they had given riſe:—laſtly, they inſiſted on thenceforth framing them themſelves.

In order to prevent any poſſibility of ſurprize in the courſe of their proceedings, it is a ſettled rule with them, that every propoſition, or bill, muſt be read three times, at different prefixed days, before it can receive a final ſanction: and before each reading of the bill, as well as at its firſt introduction, an expreſs reſolution muſt be taken to continue it under conſideration. If the bill be rejected, in any one of thoſe ſeveral operations, it muſt be dropped, and cannot be propoſed again during the ſame Seſſion (*a*).

(*a*) It is moreover a ſettled rule in the Houſe of Commons, that no Member is to ſpeak more than once in the ſame day. When the number and nature of the clauſes of a Bill require that it ſhould be diſcuſſed, in a freer manner, a committee is appointed for the purpoſe, who are to make their report afterwards to the Houſe. When the ſubject is of importance, this Committee is formed of the whole Houſe, which ſtill continues to ſit in the ſame place, but in a leſs ſolemn manner, and under another Preſident, who is called the Chairman of the Committee. In order to form the Houſe again, the mace is re-

The Commons have been, above all, jealous of the freedom of ſpeech in their Aſſembly. They have expreſsly ſtipulated, as we have above mentioned, that none of their words or ſpeeches ſhould be queſtioned in any place out of their Houſe. In fine, in order to keep their deliberations free from every kind of influence, they have denied their Preſident the right to give his vote, or even his opinion :—they moreover have ſettled it as a rule, not only that the King could not ſend to them any expreſs propoſal about laws, or other ſubjects, but even that his name ſhould never be mentioned in the deliberations (*a*).

But that circumſtance which, of all others, conſtitutes the ſuperior excellence of a Government in which the People act only through their repreſentatives, that is, by means of an aſſembly formed of a moderate number of perſons, and in which it is poſſible for every Member to propoſe new ſubjects, and to argue and to canvaſs the queſtion that ariſes, is that

placed on the Table, and the Speaker goes again into his chair.

(*a*) If any perſon were to mention in his ſpeech, what the King *wiſhes ſhould be; would be glad to ſee*, &c. he would be immediately *called to order*, for attempting to *influence the debate*.

ſuch a Conſtitution is the only one that is capable of the immenſe advantage, and of which I do not know if I have been able to convey an adequate idea to the reader when I mentioned it before (*a*), I mean that of putting into the hands of the People the moving ſprings of the Legiſlative authority.

In a Conſtitution where the People at large exerciſe the function of enacting the Laws, as it is only to thoſe perſons towards whom the Citizens are accuſtomed to turn their eyes, that is to the very Men who govern, that the Aſſembly have either time or inclination to liſten, they acquire, at length, as has conſtantly been the caſe in all Republics, the excluſive right of propoſing, if they pleaſe, when they pleaſe, in what manner they pleaſe. A prerogative this, of ſuch extent, that it would ſuffice to put an aſſembly formed of Men of the greateſt parts, at the mercy of a few dunces, and renders completely illuſory the boaſted power of the People. Nay more, as this prerogative is thus placed in the very hands of the adverſaries of the People, it forces the People to remain expoſed to their attacks, in a condition perpetually paſſive, and takes from them the only legal means by

(*a*) See chap. iv. of this Book.

which they might effectually oppoſe their uſurpations.

To expreſs the whole in a few words. A *repreſentative* Conſtitution places the remedy in the hands of thoſe who feel the diſorder: but a *popular* Conſtitution places the remedy in the hands of thoſe who cauſe it; and it is neceſſarily productive, in the event, of the miſfortune—of the political calamity, of truſting the care and the means of repreſſing the invaſions of power, to the Men who have the enjoyment of power.

CHAP. IX.

A farther Diſadvantage of Republican Governments. — The People are neceſſarily betrayed by thoſe in whom they truſt.

HOWEVER, thoſe general aſſemblies of a People who were made to determine upon things which they neither underſtood nor examined,—that general confuſion in which the Ambitious could at all times hide their artifices, and carry on their ſchemes with ſafety, were not the only evils attending the ancient Commonwealths. There was a more ſecret

defect, and a defect that ſtruck immediately at the very vitals of it, inherent in that kind of Government.

It was impoſſible for the People ever to have faithful defenders. Neither thoſe whom they had expreſsly choſen, nor thoſe whom ſome perſonal advantages enabled to govern the Aſſemblies (for the only uſe, I muſt repeat it, which the People ever make of their power, is either to give it away, or allow it to be taken from them) could poſſibly be united to them by any common feeling of the ſame concerns. As their influence put them, in a great meaſure, upon a level with thoſe who are inveſted with the executive authority, they cared little to reſtrain oppreſſions out of the reach of which they ſaw themſelves placed. Nay, they feared they ſhould thereby leſſen a power which they knew was one day to be their own; if they had not even already an actual ſhare in it (*a*).

Thus, at Rome, the only end which the Tribunes ever purſued with any degree of ſin-

(*a*) How could it be expected that Men who entertained views of being Prætors, would endeavour to reſtrain the power of the Prætors,—that Men who aimed at being one day Conſuls, would wiſh to limit the power of the Conſuls,—that Men whom their influence among the People made ſure of getting into the Senate, would ſeriouſly endeavour to confine the authority of the Senate?

cerity and perſeverance, was to procure to the People, that is to themſelves, an admiſſion to all the different dignities in the Republic. After having obtained that a law ſhould be enacted for admitting Plebeians to the Conſulſhip, they procured for them the liberty of intermarrying with the Patricians. They afterwards rendered them admiſſible to the Dictatorſhip, to the office of military Tribune, to the Cenſorſhip: in a word, the only uſe they made of the power of the People, was to increaſe privleges which they called the privileges of all, though they and their friends alone were ever likely to have the enjoyment of them.

But we do not find that they ever employed the power of the People in things really beneficial to the People. We do not find that they ever ſet bounds to the terrible power of its Magiſtrates, that they ever repreſſed that claſs of Citizens who knew how to make their crimes paſs uncenſured;—in a word, that they ever endeavoured, on the one hand to regulate, and on the other to ſtrengthen, the judicial power; precautions theſe, without which men might ſtruggle to the end of time, and never attain true liberty (*a*).

(*a*) Without ſuch precautions, laws muſt always be, as Pope expreſſes it,

"Still for the ſtrong too weak, the weak too ſtrong."

And indeed the judicial power, that ſure *criterion* of the goodneſs of a Government, was always, at Rome, a mere inſtrument of tyranny. The Conſuls were at all times inveſted with an abſolute power over the lives of the Citizens. The Dictators poſſeſſed the ſame right; ſo did the Prætors, the Tribunes of the People, the judicial Commiſſioners named by the Senate, and ſo, of courſe, did the Senate itſelf; and the fact of the three hundred and ſeventy deſerters, whom it commanded to be thrown down at one time, as Livy relates, from the Tarpeian rock, ſufficiently ſhews that it well knew how to exert its power upon occaſion.

It even may be ſaid, that, at Rome, the power of life and death, or rather the right of killing, was annexed to every kind of authority whatever, even to that which reſults from mere influence, or wealth; and the only conſequence of the murder of the Gracchi, which was accompanied by the ſlaughter of three hundred, and afterwards of four thouſand unarmed Citizens, whom the Nobles *knocked on the head*, was to engage the Senate to erect a Temple to *Concord*. The *Lex Porcia de tergo civium*, which has been ſo much celebrated, was attended with no other effect, but that of more completely ſecuring againſt the danger of a re-

taliation, ſuch Conſuls, Prætors, Queſtors, &c. as, like Verres, cauſed the inferior Citizens of Rome to be ſcourged with rods, and put to death upon croſſes, through mere caprice and cruelty (*a*).

In fine, nothing can more completely ſhew to what degree the Tribunes had forſaken the intereſts of the People, whom they were appointed to defend, than the fact of their having allowed the Senate to inveſt itſelf with the power of taxation: they even ſuffered it to aſſume to itſelf the power, not only of diſpenſing with the laws, but alſo of abrogating them (*b*).

(*a*) If we turn our eyes to Lacedæmon, we ſhall ſee, from ſeveral inſtances of the juſtice of the Ephori, that matters were little better ordered there, in regard to the adminiſtration of public juſtice. And in Athens itſelf, which is the only one of the ancient Commonwealths in which the people ſeem to have enjoyed any degree of real liberty, we ſee the Magiſtrates proceed nearly in the ſame manner as they now do among the Turks: and I think no other proof needs to be given than the ſtory of that Barber in the Piræus, who having ſpread about the town the news of the overthrow of the Athenians in Sicily, which he had heard from a ſtranger who had ſtopped at his ſhop, was put to the torture, by the command of the Archons, becauſe he could not tell the name of his author.—See *Plut. Life of Nicias*.

(*b*) There are frequent inſtances of the Conſuls taking away from the Capitol the tables of the laws paſſed under their predeceſſors. Nor was this, as we might at firſt be tempted to believe, an act of violence which ſucceſs alone

In a word, as the neceſſary conſequence of the *communicability* of power, a circumſtance eſſentially inherent in the republican form of government, it is impoſſible for it ever to be reſtrained within certain rules. Thoſe who are in a condition to controul it, from that very circumſtance, become its defenders. Though they may have riſen, as we may ſuppoſe, from the humbleſt ſtations, and ſuch as ſeemed totally to preclude them from all ambitious views, they have no ſooner reached a certain degree of eminence, than they begin to aim higher. Their endeavours had at firſt no other object, as they profeſſed, and perhaps with ſincerity, than to ſee the laws impartially executed: their only view now is to ſet themſelves above them; and ſeeing themſelves raiſed to the level of a claſs of men who poſ-

could juſtify; it was a conſequence of the acknowledged power enjoyed by the Senate, *cujus erat graviſſimum judicium de jure legum*, as we may ſee in ſeveral places in Tully. Nay, the Augurs themſelves, as Tully informs us, enjoyed the ſame privilege. "If laws have not been laid before the "people, in the legal form, they (the Augurs) may ſet them "aſide: as was done with reſpect to the *Lex Tatia*, by the "decree of the College, and to the *Leges Liviæ*, by the ad- "vice of Philip, who was Conſul and Augur." *Legem ſi non jure rogata eſt, tollere poſſunt; ut Tatiam, decreto Collegii, ut Livius, conſilio Philippi, Conſulis & Auguris.*—See *De Legib.* lib. ii. § 12.

ſeſs all the power, and enjoy all the advantages, in the State, they make haſte to aſſociate themſelves with them (*a*).

Perſonal power and independence on the laws being, in ſuch States, the immediate conſequence of the favour of the People, they are under an unavoidable neceſſity of being betrayed. Corrupting, as it were, every thing they touch, they cannot ſhew a preference to a Man, but they thereby attack his virtue; they cannot raiſe him, without immediately loſing him and weakening their own cauſe;

(*a*) Which always proves an eaſy thing. It is in Commonwealths the particular care of that claſs of Men who are at the head of the State, to keep a watchful eye over the People, in order to draw over to their own party any Man who happens to acquire a conſiderable influence among them; and this they are (and indeed muſt be) the more attentive to do, in proportion as the nature of the Government is more democratical.

The Conſtitution of Rome had even made expreſs proviſions on that ſubject. Not only the Cenſors could at once remove any Citizen into what Tribe they pleaſed, and even into the Senate, and we may eaſily believe that they made a political uſe of this privilege; but it was moreover a ſettled rule, that all perſons who had been promoted to any public office by the People, ſuch as the Conſulſhip, the Edileſhip, or Tribuneſhip, became, *ipſo facto*, members of the Senate,—See Middleton's *Diſſertation on the Roman Senate*.

nay, they inſpire him with views directly oppoſite to their own, and ſend him to join and increaſe the number of their enemies.

Thus, at Rome, after the feeble barrier which excluded the People from offices of power and dignity had been thrown down, the great Plebeians, whom the votes of the People began to raiſe to thoſe offices, were immediately received into the Senate, as has been juſt now obſerved. From that period, their families began to form, in conjunction with the ancient Patrician families, a new combination or political aſſociation of perſons (*a*); and as this combination was formed of no particular claſs of Citizens, but of all thoſe in general who had influence enough to gain admittance into it, a ſingle overgrown head was now to be ſeen in the Republic, which conſiſting of all thoſe who had either wealth or power of any kind, and diſpoſing at will of the laws and the power of the people (*b*), ſoon loſt all regard to moderation and decency.

(*a*) Called *Nobiles* and *Nobilitas*.

(*b*) It was, in ſeveral reſpects, a misfortune for the People of Rome, whatever may have been ſaid to the contrary by the Writers on this ſubject, that the diſtinction between the Patricians and the Plebeians was ever aboliſhed; though, to ſay the truth, this was an event which could not be prevented.

Every Conſtitution, therefore, whatever may be its form, which does not provide for inconveniencies of the kind here mentioned, is a Conſtitution eſſentially imperfect. It is in Man himſelf that the ſource of the evils to be remedied, lies; general precautions therefore can alone prevent them. If it be a fatal error entirely to rely on the juſtice and equity of thoſe who govern, it is an error no leſs dangerous to imagine, that, while virtue and moderation are the conſtant companions of thoſe who oppoſe the abuſes of Power, all ambition, all thirſt after dominion, have retired to the other party.

Though wiſe Men ſometimes may, led aſtray by the power of names, and the heat of political contentions, loſe ſight of what ought to be their real aim, they nevertheleſs know, that it is not againſt the *Appii*, the *Coruncanii*, the *Cethegi*, but againſt all thoſe who can influence the execution of the laws, that precautions ought to be taken, — that it is not the Conſul, the Prætor, the Archon, the Miniſter, the King, whom we ought to dread, nor the Tribune, or the Repreſentative of the People, on whom we ought implicitly to rely; but that all thoſe perſons, without diſtinction, ought to be the objects of our jealouſy, who, by any methods, and under any names whatſo-

ever, have acquired the means of turning againſt each individual the collective ſtrength of all, and have ſo ordered things around themſelves, that whoever attempts to reſiſt them, is ſure to find himſelf engaged alone againſt a thouſand.

CHAP. X.

Fundamental difference between the Engliſh Government, and the Governments juſt deſcribed—In England all Executive Authority is placed out of the hands of thoſe in whom the People truſt. Uſefulneſs of the Power of the Crown.

IN what manner then has the Engliſh Conſtitution contrived to find a remedy for evils which, from the very nature of Men and things, ſeem to be irremediable? How has it found means to oblige thoſe perſons to whom the People have given up their power, to make them effectual and laſting returns of gratitude? thoſe who enjoy an excluſive authority, to ſeek the advantage of all?—thoſe who make the laws, to make only equitable ones?—It has been by ſubjecting themſelves to thoſe laws, and for that purpoſe excluding them from all ſhare in the execution of them.

Thus, the Parliament can eſtabliſh as numerous a ſtanding army as it pleaſes; but immediately another power comes forward, which takes the abſolute command of it, which fills all the poſts in it, and directs its motions at its pleaſure. The Parliament may lay new taxes, but immediatèly another power ſeizes upon the produce of them, and alone enjoys the advantages and glory ariſing from the diſpoſal of it. The Parliament may even, if you pleaſe, repeal the laws on which the ſafety of the Subject is grounded: but it is not their own caprices and arbitrary humours, it is the caprice and paſſions of other Men, which they will have gratified, when they ſhall thus have overthrown the columns of public liberty.

And the Engliſh conſtitution has not only excluded from any ſhare in the execution of the laws, thoſe in whom the People truſt for the enacting of them, but it has alſo taken from them what would have had the ſame pernicious influence on their deliberations—the hope of ever invading that executive authority, and transferring it to themſelves.

This authority has been made in Fngland one ſingle, indiviſible prerogative; it has been made for ever the unalienable attribute of one perſon, marked out and aſcertained before-

hand by ſolemn laws and long-eſtabliſhed cuſtom, and all the active forces in the State have been left at his diſpoſal.

In order to ſecure this prerogative ſtill farther againſt all poſſibility of invaſions from individuals, it has been heightened and ſtrengthened by every thing that can attract and fix the attention and reverence of the People. The power of conferring, and withdrawing, places and employments has alſo been added to it, and ambition itſelf has thus been intereſted in its defence, and ſervice.

A ſhare in the Legiſlative power has alſo been given to the man to whom this prerogative has been delegated: a paſſive ſhare indeed, and the only one that can, with ſafety to the State, be truſted to him, but by means of which he is enabled to defeat every attempt againſt his conſtitutional authority.

Laſtly, he is the only ſelf-exiſting and permanent Power in the State. The Generals, the Miniſters of State, are ſo only by the continuance of his pleaſure. He would even diſmiſs the Parliament themſelves, if ever he ſaw them begin to entertain dangerous deſigns; and he needs only ſay one word to diſperſe every power in the State that may threaten his authority. Formidable prerogatives theſe;

but with regard to which we ſhall be inclined to lay aſide our apprehenſions, if we reflect, on the one hand, on the great privileges of the People by which they have been counterbalanced, and on the other, on the happy conſequences that reſult from their being thus united together.

From this unity, and, if I may ſo expreſs myſelf, this total ſequeſtration of the Executive authority, this advantageous conſequence in the firſt place follows, which has been mentioned in a preceding Chapter, that the attention of the whole Nation is directed to one and the ſame object. The People, beſides, enjoy this moſt eſſential advantage, which they would vainly endeavour to obtain under the government of many,—they can give their confidence, without giving power over themſelves, and againſt themſelves; they can appoint Truſtees, and yet not give themſelves Maſters.

Thoſe Men to whom the People have delegated the power of framing the Laws, are thereby made ſure to feel the whole preſſure of them. They can increaſe the prerogatives of the executive authority, but they cannot inveſt themſelves with it: —they have it not in

their power to command its motions, they only can unbind its hands.

They are made to derive their importance, nay, they are indebted for their exiſtence, to the need in which that Power ſtands of their aſſiſtance; and they know that they would no ſooner have abuſed the truſt of the People, and completed the treacherous work, than they would ſee themſelves diſſolved, ſpurned, like inſtruments now ſpent, and become uſeleſs.

This ſame diſpoſition of things alſo prevents, in England, that eſſential defect, inherent in the Government of many, which has been deſcribed in the preceding Chapter.

In that ſort of Government, the cauſe of the People, as has been obſerved, is continually deſerted and betrayed. The arbitrary prerogatives of the governing Powers are at all times either openly or ſecretly favoured, not only by thoſe in whoſe poſſeſſion they are, not only by thoſe who have good reaſon to hope that they ſhall at ſome future time ſhare in the exerciſe of them, but alſo by the whole crowd of thoſe Men who, in conſequence of the natural diſpoſition of Mankind to over-rate their own advantages, fondly imagine, either that they ſhall one day enjoy ſome branch

of this governing authority, or that they are even already, in ſome way or other, aſſociated to it.

But as this authority has been made, in England, the indiviſible, unalienable attribute of one alone, all other perſons in the State are, *ipſo facto*, intereſted to confine it within its due bounds. Liberty is thus made the common cauſe of all; the laws that ſecure it are ſupported by Men of every rank and order; and the Habeas Corpus Act, for inſtance, is as zealouſly defended by the firſt Nobleman in the Kingdom, as by the meaneſt Subject.

Even the Miniſter himſelf, in conſequence of this *inalienability* of the executive authority, is equally intereſted with his fellow-citizens to maintain the laws on which public liberty is founded. He knows, in the midſt of his ſchemes for enjoying or retaining his authority, that a Court-intrigue, or a caprice, may at every inſtant confound him with the multitude, and the rancour of a ſucceſſor long kept out, ſend him to linger in the ſame jail which his temporary paſſions might tempt him to prepare for others.

In conſequence of this diſpoſition of things, great Men, therefore, are made to join in a

common caufe with the People, for reftraining the exceffes of the governing Power; and, which is no lefs effential to the public welfare, they are alfo, from this fame caufe, compelled to reftrain the excefs of their own private power and influence, and a general fpirit of juftice becomes thus diffufed through all parts of the State.

The wealthy Commoner, the Reprefentative of the People, the potent Peer, always having before their eyes the view of a formidable Power, of a Power from the attempts of which they have only the fhield of the laws to protect them, and which would, in the iffue, retaliate an hundred fold upon them their acts of violence, are compelled, both to wifh only for equitable laws, and to obferve them with fcrupulous exactnefs.

Let then the People dread (it is neceffary to the prefervation of their liberty), but let them never entirely ceafe to love, the Throne, that fole and indivifible feat of all the active powers in the State.

Let them know, it is that, which, by lending an immenfe ftrength to the arm of Juftice, has enabled her to bring to account as well the moft powerful, as the meaneft offen-

der,—which has ſuppreſſed, and if I may ſo expreſs myſelf, weeded out all thoſe tyrannies ſometimes confederated with, and ſometimes adverſe to, each other, which inceſſantly tend to grow up in the middle of civil ſocieties, and are the more terrible in proportion as they feel themſelves to be leſs firmly eſtabliſhed.

Let them know, it is that, which, by making all honours and places depend on the will of one Man, has confined within private walls thoſe projects the purſuit of which, in former times, ſhook the foundations of whole States,—has changed into intrigues the conflicts, the outrages of ambition,—and that thoſe contentions which, in the preſent times, afford them only matter of amuſement, are the Volcanos which ſet in flames the ancient Commonwealths.

It is that, which, leaving to the rich no other ſecurity for his palace than that which the peaſant has for his cottage, has united his cauſe to that of this latter, the cauſe of the powerful to that of the helpleſs, the cauſe of the Man of extenſive influence and connections, to that of him who is without friends.

It is the Throne above all, it is this jealous Power, which makes the People ſure that its Repreſentatives never will be any thing more

than its Reprefentatives: at the fame time it is the ever-fubfifting Carthage which vouches to it for the duration of their virtue.

CHAP. XI.

The Powers which the People themfelves exercife.— The Election of Members of Parliament.

THE Englifh Conftitution having effentially connected the fate of the Men to whom the People truft their power, with that of the People themfelves, really feems, by that caution alone, to have procured the latter a complete fecurity.

However, as the viciffitude of human affairs may, in procefs of time, realize events which at firft had appeared moft improbable, it might happen that the Minifters of the Executive power, notwithftanding the intereft they themfelves have in the prefervation of public liberty, and in fpite of the precautions exprefsly taken, in order to prevent the effect of their influence, fhould, at length, employ fuch efficacious means of corruption as might bring about the furrender of fome of the laws upon

which this public liberty is founded. And though we ſhould ſuppoſe that ſuch a danger would really be chimerical, it might at leaſt happen, that conniving at a vicious Adminiſtration, and being over-liberal of the produce of the labours of the People, the Repreſentatives of the People might make them ſuffer many of the evils which attend worſe forms of Government.

Laſtly, as their duty does not conſiſt only in preſerving their conſtituents againſt the calamities of an arbitrary Government, but moreover in procuring them the beſt adminiſtration poſſible, it might happen that they would manifeſt, in this reſpect, an indifference which would, in its conſequences, amount to a real calamity.

It was therefore neceſſary that the Conſtitution ſhould furniſh a remedy for all the above caſes: now, it is in the right of electing Members of Parliament, that this remedy lies.

When the time is come at which the commiſſion which the People had given to their delegates expires, they again aſſemble in their ſeveral Towns or Counties: on theſe occaſions they have it in their power to elect again thoſe

of their Repreſentatives whoſe former conduct they approve, and to reject thoſe who have contributed to give riſe to their complaints. A ſimple remedy this, and which only requiring, in its application, a knowledge of matters of fact, is entirely within the reach of the abilities of the People; but a remedy, at the ſame time, which is the moſt effectual that could be applied; for, as the evils complained of, ariſe merely from the peculiar diſpoſitions of a certain number of individuals, to ſet aſide thoſe individuals, is to pluck up the evil by the roots.

But I perceive, that in order to make the reader ſenſible of the advantages that may accrue to the People of England, from their right of election, there is another of their rights, of which it is abſolutely neceſſary that I ſhould firſt give an account.

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CHAP. XII.

The Subject continued.—Liberty of the Press.

AS the evils that may be complained of in a State, do not always arise merely from the defect of the laws, but also from the non-execution of them, and this non-execution of such a kind, that it is often impossible to subject it to any express punishment, or even to ascertain it by any previous definition, Men, in several States, have been led to seek for an expedient that might supply the unavoidable deficiency of legislative provisions, and begin to operate, as it were, from the point at which the latter began to fail: I mean here to speak of the Censorial power; a power which may produce excellent effects, but the exercise of which (contrary to that of the legislative power) must be left to the People themselves.

As the proposed end of Legislation is not, according to what has been above observed, to have the particular intentions of individuals, upon every case, known and complied with, but solely to have what is most conducive to the public good on the occasions that arise, found out, and established, it is not an essential

requiſite in legiſlative operations, that every individual ſhould be called upon to deliver his opinion; and ſince this expedient, which at firſt ſight appears ſo natural, of ſeeking out by the advice of all that which concerns all, is found liable, when carried into practice, to the greateſt inconveniences, we muſt not heſitate to lay it aſide entirely. But as it is the opinion of individuals alone, which conſtitutes the check of a cenſorial power, this power cannot poſſibly produce its intended effect any farther than this public opinion is made known and declared: the ſentiments of the People are the only thing in queſtion here: therefore it is neceſſary that the People ſhould ſpeak for themſelves, and manifeſt thoſe ſentiments. A particular Court of Cenſure therefore eſſentially fruſtrates its intended purpoſe: it is attended, beſides, with very great inconveniences.

As the uſe of ſuch a Court is to determine upon thoſe caſes which lie out of the reach of the laws, it cannot be tied down to any preciſe regulations. As a farther conſequence of the arbitrary nature of its functions, it cannot even be ſubjected to any conſtitutional check: and it continually preſents to the eye the view of a power entirely arbitrary, and

which in its different exertions may affect, in the most cruel manner, the peace and happiness of individuals. It is attended, besides, with this very pernicious consequence, that, by dictating to the people their judgments of Men or measures, it takes from them that freedom of thinking which is the noblest privilege, as well as the firmest support of Liberty (*a*).

We may therefore look upon it as a farther proof of the soundness of the principles

(*a*) M. de Montesquieu, and M. Rousseau, and indeed all the Writers on this subject I have met with, bestow vast encomiums on the Censorial Tribunal that had been instituted at Rome:—they have not been aware that this power of Censure, lodged in the hands of peculiar Magistrates, with other discretionary powers annexed to it, was no other than a piece of state-craft, like those described in the preceding Chapters, and had been contrived by the Senate as an additional means of securing its authority. Sir Thomas More has also adopted similar opinions on the subject: and he is so far from allowing the People to canvass the actions of their Rulers, that in his System of Policy, which he calls, *An Account of Utopia* (the happy Region, εὖ and τοπος), he makes it death for individuals to talk about the conduct of Government.

I feel a kind of Pleasure, I must confess, to observe on this occasion, that though I have been called by some an advocate for Power, I have carried my ideas of Liberty farther than many Writers who have mentioned that word with much enthusiasm.

on which the English constitution is founded, that it has allotted to the People themselves the province of openly canvassing and arraigning the conduct of those who are invested with any branch of public authority; and that it has thus delivered into the hands of the People at large, the exercise of the censorial power. Every subject in England has not only a right to present petitions to the King, or to the Houses of Parliament, but he has a right also to lay his complaints and observations before the public, by means of an open press. A formidable right this, to those who rule mankind; and which, continually dispelling the cloud of majesty by which they are surrounded, brings them to a level with the rest of the people, and strikes at the very being of their authority.

And indeed this privilege is that which has been obtained by the English Nation with the greatest difficulty, and latest in point of time, at the expence of the Executive power. Freedom was in every other respect already established, when the English were still, with regard to the public expression of their sentiments, under restraints that may be called despotic. History abounds with instances of the severity of the Court of Star-Chamber,

againſt thoſe who preſumed to write on political ſubjects. It had fixed the number of printers and printing preſſes, and appointed a *Licenſer*, without whoſe approbation no book could be publiſhed. Beſides, as this Tribunal decided matters by its own ſingle authority, without the intervention of a Jury, it was always ready to find thoſe perſons guilty, whom the Court was pleaſed to look upon as ſuch; nor was it indeed without ground that Chief Juſtice Coke, whoſe notions of liberty were ſomewhat tainted with the prejudices of the times in which he lived, concluded the eulogiums he has beſtowed on this Court, with ſaying, that, "the right inſtitution and orders "thereof being obſerved, it doth keep all "England in quiet."

After the Court of Star-Chamber had been aboliſhed, the Long Parliament, whoſe conduct and aſſumed power were little better qualified to bear a ſcrutiny, revived the regulations againſt the freedom of the preſs. Charles the Second, and after him James the Second, procured farther renewals of them. Theſe latter acts having expired in the year 1692, were at this æra, although poſterior to the Revolution, continued for two years longer; ſo that it was not till the year 1694, that,

in conſequence of the Parliament's refuſal to continue the prohibitions any longer, the freedom of the preſs (a privilege which the Executive power could not, it ſeemed, prevail upon itſelf to yield up to the people) was finally eſtabliſhed.

In what does then this liberty of the preſs preciſely conſiſt? Is it a liberty left to every one to publiſh any thing that comes into his head? to calumniate, to blacken, whomſoever he pleaſes? No; the ſame laws that protect the perſon and the property of the individual, do alſo protect his reputation; and they decree againſt libels, when really ſo, puniſhments of much the ſame kind as are eſtabliſhed in other Countries. But, on the other hand, they do not allow, as in other States, that a Man ſhould be deemed guilty of a crime for merely publiſhing ſomething in print; and they appoint a puniſhment only againſt him who has printed things that are in their nature criminal, and who is declared guilty of ſo doing by twelve of his equals, appointed to determine upon his caſe, with the precautions we have before deſcribed.

The liberty of the preſs, as eſtabliſhed in England, conſiſts, therefore, to define it more preciſely, in this, That neither the Courts of

Juſtice, nor any other Judges whatever, are authoriſed to take any notice of writings intended for the preſs, but are confined to thoſe which are actually printed, and muſt, in theſe caſes, proceed by the Trial by Jury.

It is even this latter circumſtance which more particularly conſtitutes the freedom of the preſs. If the Magiſtrates, though confined in their proceedings to caſes of criminal publications, were to be the ſole Judges of the criminal nature of the things publiſhed, it might eaſily happen that, with regard to a point which, like this, ſo highly excites the jealouſy of the governing Powers, they would exert themſelves with ſo much ſpirit and perſeverance, that they might, at length, ſucceed in completely ſtriking off all the heads of the hydra.

But whether the authority of the Judges be exerted at the motion of a private individual, or whether it be at the inſtance of the Government itſelf, their ſole office is to declare the puniſhment eſtabliſhed by the law:—it is to the Jury alone that it belongs to determine on the matter of law, as well as on the matter of fact; that is, to determine, not only whether the writing which is the ſubject of the

charge has really been composed by the Man charged with having done it, and whether it be really meant of the person named in the indictment,—but also whether its contents are criminal.

And though the law in England does not allow a Man, prosecuted for having published a libel, to offer to support by evidence the truth of the facts contained in it (a mode of proceeding which would be attended with very mischievous consequences, and is every where prohibited), yet (*a*) as the indictment is to express that the facts are *false*, *malicious*, &c. and the Jury, at the same time, are sole masters of their verdict, that is, may ground it upon what considerations they please, it is very probable that they would acquit the accused party, if the fact, asserted in the writing before them, were matter of undoubted truth, and of a general evil tendency. They, at least, would certainly have it in their power.

And this would still more likely be the case if the conduct of the Government itself was arraigned; because, besides this conviction

(*a*) In actions for damages between individuals, the case, if I mistake not, is different, and the defendant is allowed to produce evidence of the facts asserted by him.

which we ſuppoſe in the Jury, of the certainty of the facts, they would alſo be influenced by their ſenſe of a principle generally admitted in England, and which, in a late celebrated cauſe, has been ſtrongly inſiſted upon, viz. That, "though to ſpeak ill of individuals was deſerving of reprehenſion, yet the public acts of Government ought to lie open to public examination, and that it was a ſervice done to the State, to canvaſs them freely (*a*)."

And indeed this extreme ſecurity with which every man in England is enabled to communicate his ſentiments to the Public, and the general concern which matters relative to the Government are always ſure to create, has wonderfully multiplied all kinds of public papers. Beſides thoſe which, being publiſhed at the end of every year, month, or week, preſent to the reader a recapitulation of every thing intereſting that may have been done or ſaid during their reſpective periods, there are ſeveral others, which making their appearance every day, or every other day, communicate to the public the ſeveral meaſures taken by

(*a*) See Serjeant Glynn's Speech for Woodfall in the proſecution againſt the latter, by the Attorney-General, for publiſhing Junius's letter to the King.

the Government, as well as the different cauſes of any importance, whether civil or criminal, that occur in the Courts of Juſtice, and ſketches from the ſpeeches either of the Advocates, or the Judges, concerned in the management and deciſion of them. During the time the Parliament continues ſitting, the votes, or reſolutions of the Houſe of Commons, are daily publiſhed by authority; and the moſt intereſting ſpeeches in both Houſes are taken down in ſhort hand, and communicated to the Public, in print.

Laſtly, the private anecdotes in the Metropolis, and the Country, concur alſo towards filling the collection; and as the ſeveral public papers circulate, or are tranſcribed into others, in the different Country Towns, and even find their way into the villages, where every Man, down to the labourer, peruſes them with a ſort of eagerneſs, every individual thus becomes acquainted with the State of the Nation, from one end to the other, and by theſe means the general intercourſe is ſuch, that the three Kingdoms ſeem as if they were one ſingle Town.

And it is this public notoriety of all things that conſtitutes the ſupplemental power, or check, which, we have above ſaid, is ſo uſeful to remedy the unavoidable inſufficiency

of the laws, and keep within their reſpective bounds all thoſe perſons who have any ſhare of public authority.

As they are thereby made ſenſible that all their actions are expoſed to public view, they dare not venture upon thoſe acts of partiality, thoſe ſecret connivances at the iniquities of particular perſons, or thoſe vexatious practices, which the Man in office is but too apt to be guilty of, when, exerciſing his office at a diſtance from the public eye, and as it were in a corner, he is ſatisfied that provided he be cautious he may diſpenſe with being juſt. Whatever may be the kind of abuſe in which perſons in power may, in ſuch a ſtate of things, be tempted to indulge themſelves, they are convinced that their irregularities will be immediately divulged. The Juryman, for example, knows that his verdict, the Judge, that his direction to the Jury, will preſently be laid before the Public: and there is no Man in office, but who thus finds himſelf compelled, in almoſt every inſtance, to chooſe between his duty, and the ſurrender of all his former reputation.

It will, I am aware, be thought that I ſpeak in too high terms, of the effects produced by the public news-papers. I indeed confeſs

that all the pieces contained in them are not patterns of good reaſoning, or of the trueſt Attic wit; but, on the other hand, it ſcarcely ever happens that a ſubject in which the laws, or in general the public welfare, are really concerned, fails to call forth ſome able writer, who, under ſome form or other, communicates to the public his obſervations and complaints. I ſhall add here, that, though an upright Man, labouring for a while under a ſtrong popular prejudice, may, ſupported by the conſciouſneſs of his innocence, endure with patience the ſevereſt imputations, the guilty Man, hearing nothing in the reproaches of the Public, but what he knows to be true, and already upbraids himſelf with, is very far from enjoying any ſuch comfort; and that, when a man's own conſcience takes part againſt him, the moſt deſpicable weapon is ſufficient to wound him to the quick (*a*).

(*a*) I ſhall take this occaſion to obſerve, that the liberty of the preſs is ſo far from being injurious to the reputation of individuals (as ſome perſons have complained), that it is, on the contrary, its ſureſt guard. When there exiſts no means of Communication with the Public, every one is expoſed, without defence, to the ſecret ſhafts of malignity and envy. The man in office loſes his reputation, the Merchant his credit, the private individual his character, without ſo much as

Even thoſe perſons whoſe greatneſs ſeems moſt to ſet them above the reach of public cenſure, are not thoſe who leaſt feel its effects. They have need of the ſuffrages of that vulgar whom they affect to deſpiſe, and who are, after all, the diſpenſers of that glory, which is the real object of their ambitious cares. Though all have not ſo much ſincerity as Alexander, they have equal reaſon to exclaim, *O People! what toils do we not undergo in order to gain your applauſe!*

I confeſs that in a ſtate where the People dare not ſpeak their ſentiments, but with a view to pleaſe the ears of their rulers, it is poſſible that either the Prince, or thoſe to whom he has truſted his authority, may ſometimes miſtake the nature of the public ſentiments, or that, for want of that affection of which they are denied all poſſible marks, they may reſt contented with inſpiring terror, and make themſelves amends in beholding the over-awed multitude ſmother their complaints.

knowing either who are his enemies, or which way they carry on their attacks. But when there exiſts a free preſs, an innocent Man immediately brings the matter into open day, and cruſhes his adverſaries, at once, by a public challenge to lay before the public the grounds of their ſeveral imputations.

But when the laws give a full ſcope to the People for the expreſſion of their ſentiments, thoſe who govern cannot conceal from themſelves the diſagreeable truths which reſound from all ſides. They are obliged to put up even with ridicule, and the coarſeſt jeſts are not always thoſe which give them the leaſt uneaſineſs. Like the lion in the fable, they muſt bear the blows of thoſe enemies whom they deſpiſe the moſt; and they are, at length, ſtopped ſhort in their career, and compelled to give up thoſe unjuſt purſuits which they find to draw upon them, inſtead of that admiration which is the propoſed end and reward of their labours, nothing but mortification and diſguſt.

In ſhort, whoever conſiders what it is that conſtitutes the moving principle of what we call great affairs, and the invincible ſenſibility of Man to the opinion of his fellow-creatures, will not heſitate to affirm that, if it were poſſible for the liberty of the preſs to exiſt in a deſpotic government, and (what is not leſs difficult) for it to exiſt without changing the conſtitution, this liberty of the preſs would alone form a counterpoiſe to the power of the Prince. If, for example, in an empire of the Eaſt, a ſanctuary could be found, which, ren-

dered respectable by the ancient religion of the people, might ensure safety to those who should bring thither their observations of any kind, and that from thence printed papers should issue, which, under a certain seal, might be equally respected, and which in their daily appearance should examine and freely discuss the conduct of the Cadis, the Bashaws, the Vizir, the Divan, and the Sultan himself,—that would introduce immediately some degree of liberty.

CHAP. XIII.

The Subject continued.

ANOTHER effect, and a very considerable one, of the liberty of the press, is, that it enables the People effectually to exert those means which the Constitution has bestowed on them, of influencing the motions of the Government.

It has been observed in a former place, how it came to be a matter of impossibility for any large number of men, when obliged to act in a body, and upon the spot, to take any well-weighed resolution. But this inconvenience, which is the inevitable consequence of their

ſituation, does in no wiſe argue a perſonal inferiority in them, with reſpect to the few who, from ſome accidental advantages, are enabled to influence their determinations. It is not Fortune, it is Nature, that has made the eſſential differences between Men: and whatever appellation a ſmall number of perſons who ſpeak without ſufficient reflection, may affix to the general body of their fellow-creatures, the whole difference between the Stateſman, and many a Man from among what they call the dregs of the People, often lies in the rough outſide of the latter; a diſguiſe which may fall off on the firſt opportunity; and more than once has it happened, that from the middle of a multitude in appearance contemptible, there have been ſeen to riſe at once Viriatuſes, or Spartacuſes.

Time, and a more favourable ſituation (to repeat it once more), are therefore the only things wanting to the People; and the freedom of the preſs affords the remedy to theſe diſadvantages. Through its aſſiſtance every individual may, at his leiſure and in retirement, inform himſelf of every thing that relates to the queſtions on which he is to take a reſolution. Through its aſſiſtance, a whole Nation as it were holds a Council, and deliberates; ſlowly

indeed (for a Nation cannot be informed like an aſſembly of Judges), but after a regular manner, and with certainty. Through its aſſiſtance, all matters of fact are, at length, made clear; and, through the conflict of the different anſwers and replies, nothing at laſt remains, but the ſound part of the arguments (*a*).

(*a*) This right of publicly diſcuſſing political Subjects, is alone a great advantage to a People who enjoy it; and if the Citizens of Geneva, for inſtance, have preſerved their liberty better than the People have been able to do in the other Commonwealths of Switzerland, it is, I think, owing to the extenſive right they poſſeſs of making public remonſtrances to their Magiſtrates. To theſe remonſtrances the Magiſtrates, for inſtance, the Council of *Twenty-five*, to which they are uſually made, are obliged to give an anſwer. If this anſwer does not ſatisfy the remonſtrating Citizens, they take time, perhaps two or three weeks, to make a reply to it, which muſt alſo be anſwered; and the number of Citizens who go up with each new remonſtrance increaſes, according as they are thought to have reaſon on their ſide. Thus, the remonſtrances which were made ſome years ago, on account of the ſentence againſt the celebrated M. Rouſſeau, and were delivered at firſt by only forty Citizens, were afterwards often accompanied by about nine hundred.—This circumſtance, together with the ceremony with which thoſe remonſtrance, (or *Repreſentations*, as they more commonly call them) are delivered, has rendered them a great check on the conduct of the Magiſtrates: they even have been ſtill more uſeful to

Hence, though all good Men may not think themſelves obliged to concur implicitly in the tumultuary reſolutions of a People whom their Orators take pains to agitate, yet, on the other hand, when this ſame People, left to itſelf, perſeveres in opinions which have for a long time been diſcuſſed in public writings, and from which (it is eſſential to add) all errors concerning facts have been removed, ſuch perſeverance is certainly a very reſpectable deciſion; and then it is, though only then, that we may with ſafety ſay,—"the voice of the People "is the voice of God."

How, therefore, can the People of England *act*, when, having formed opinions which may really be called their own, they think they have juſt cauſe to complain againſt the Adminiſtration? It is, as has been ſaid above, by means of the right they have of electing their Repreſentatives; and the ſame method of general intercourſe that has informed them with regard to the objects of their complaints, will likewiſe enable them to apply the remedy to them.

the Citizens of Geneva, as a preventative than as a remedy; and nothing is more likely to deter the Magiſtrates from taking a ſtep of any kind, than the thought that it will give riſe to a *Repreſentation*.

Through this means they are acquainted with the nature of the ſubjects that have been deliberated upon in the Aſſembly of their Repreſentatives;—they are informed by whom the different motions were made,—by whom they were ſupported; and the manner in which the ſuffrages are delivered, is ſuch, that they always can know the names of thoſe who have voted conſtantly for the advancement of pernicious meaſures.

And the People not only know the particular diſpoſitions of every Member of the Houſe of Commons; but the general notoriety of all things gives them alſo a knowledge of the political ſentiments of a great number of thoſe, whom their ſituation in life renders fit to fill a place in that Houſe. And availing themſelves of the ſeveral vacancies that happen, and ſtill more of the opportunity of a general election, they purify either ſucceſſively, or at once, the Legiſlative Aſſembly; and thus, without any commotion or danger to the State, they effect a material reformation in the views of the Government.

I am aware that ſome perſons will doubt theſe patriotic and ſyſtematic views, which I am here attributing to the People of England, and will object to me the diſorders that ſome-

times happen at Elections. But this reproach, which, by the way, comes with but little propriety from Writers who would have the People transact every thing in their own persons, this reproach, I say, though true to a certain degree, is not however so much so as it is thought by certain persons who have taken only a superficial survey of the state of things.

Without doubt, in a Constitution in which all important causes of uneasiness are so effectually prevented, it is impossible but that the People will have long intervals of inattention. Being then called upon, on a sudden, from this state of inactivity, to elect Representatives, they have not examined, beforehand, the merits of those who ask them their votes; and the latter have not had, amidst the general tranquillity, any opportunity to make themselves known to them.

The Elector, persuaded, at the same time, that the person whom he will elect, will be equally interested with himself in the support of public liberty, does not enter into laborious disquisitions, and from which he sees he may exempt himself. Obliged, however, to give the preference to somebody, he forms his choice on motives which would not be excusable, if it were not that some motives are

neceſſary to make a choice, and that, at this inſtant, he is not influenced by any other: and indeed it muſt be confeſſed, that, in the ordinary courſe of things, and with Electors of a certain rank in life, that Candidate who gives the beſt entertainment, has a great chance to get the better of his competitors.

But if the meaſures of Government, and the reception of thoſe meaſures in Parliament, by means of a too complying Houſe of Commons, ſhould ever be ſuch as to ſpread a ſerious alarm among the People, the ſame cauſes which have concurred to eſtabliſh public liberty, would, no doubt, operate again, and likewiſe concur in its ſupport. A general combination would then be formed, both of thoſe Members of Parliament who have remained true to the public cauſe, and of perſons of every order among the People. Public meetings, in ſuch circumſtances, would be appointed, general ſubſcriptions would be entered into, to ſupport the expences, whatever they might be, of ſuch a neceſſary oppoſition; and all private and unworthy purpoſes being ſuppreſſed by the ſenſe of the National danger, the choice of the electors would then be wholly determined by the conſideration of the public ſpirit of the Candidates, and the tokens given by them of ſuch ſpirit.

Thus were thoſe Parliaments formed, which ſuppreſſed arbitrary taxes and impriſonments. Thus was it, that, under Charles the Second, the People, when recovered from that enthuſiaſm of affection with which they received a King ſo long perſecuted, at laſt returned to him no Parliaments but ſuch as were compoſed of a majority of Men attached to public liberty. Thus it was, that, perſevering in a conduct which the circumſtances of the times rendered neceſſary, the People baffled the arts of the Government; and Charles diſſolved three ſucceſſive Parliaments, without any other effect but that of having thoſe ſame Men re-choſen, and ſet again in oppoſition to him, of whom he hoped he had rid himſelf for ever.

Nor was James the Second happier in his attempts than Charles had been. This Prince ſoon experienced that his Parliament was actuated by the ſame ſpirit as thoſe which had oppoſed the deſigns of his late brother; and having ſuffered himſelf to be led into meaſures of violence, inſtead of being better taught by the diſcovery he made of the real ſentiments of the People, his reign was terminated by that cataſtrophe with which every one is acquainted.

Indeed, if we combine the right enjoyed

by the People of England, of electing their Reprefentatives, with the whole of the English Government, we fhall become continually more and more fenfible of the excellent effects that may refult from that right. All Men in the State are, as has been before obferved, really interefted in the fupport of public liberty;—nothing but temporary motives, and fuch as are quite peculiar to themfelves, can poffibly induce the Members of any Houfe of Commons to connive at meafures deftructive of this liberty: the People, therefore, under fuch circumftances, need only change thefe Members in order effectually to reform the conduct of that Houfe: and it may fairly be pronounced beforehand, that a Houfe of Commons, compofed of a new fet of perfons, will, from this bare circumftance, be in the interefts of the People.

Hence, though the complaints of the People do not always meet with a fpeedy and immediate redrefs (a celerity which would be the fymptom of a fatal unfteadinefs in the Conftitution, and would fooner or later bring on its ruin); yet, when we attentively confider the nature and the refources of this Conftitution, we fhall not think it too bold an affertion

to ſay, that it is impoſſible but that complaints in which the People perſevere, that is, to repeat it once more, well-grounded complaints, will ſooner or later be redreſſed.

CHAP. XIV.

Right of Reſiſtance.

BUT all thoſe privileges of the People, conſidered in themſelves, are but feeble defences againſt the real ſtrength of thoſe who govern. All thoſe proviſions, all thoſe reciprocal Rights, neceſſarily ſuppoſe that things remain in their legal and ſettled courſe: what would then be the reſource of the People, if ever the Prince, ſuddenly freeing himſelf from all reſtraint, and throwing himſelf as it were out of the Conſtitution, ſhould no longer reſpect either the perſon, or the property of the ſubject, and either ſhould make no account of his convention with the Parliament, or attempt to force it implicitly to ſubmit to his will?—It would be reſiſtance.

Without entering here into the diſcuſſion of a doctrine which would lead us to inquire into the firſt principles of Civil Government, conſequently engage us in a long diſquiſition, and with regard to which, beſides, perſons free from prejudices agree pretty much in their opinions, I ſhall only obſerve here (and it will be ſufficient for my purpoſe) that the queſtion has been decided in favour of this doctrine by the Laws of England, and that reſiſtance is looked upon by them as the ultimate and lawful reſource againſt the violences of Power.

It was reſiſtance that gave birth to the Great Charter, that laſting foundation of Engliſh Liberty; and the exceſſes of a Power eſtabliſhed by force, were alſo reſtrained by force (*a*). It has been by the ſame means that, at different times, the People have procured the

(*a*) Lord Lyttelton ſays extremely well, in his Perſian Letters, " If the privileges of the People of England " be conceſſions from the Crown, is not the power " of the Crown itſelf, a conceſſion from the People?" It might be ſaid with equal truth, and ſomewhat more in point of the ſubject of this Chapter,—If the privileges of the People be an encroachment on the power of Kings, the power itſelf of Kings was at firſt an encroachment (no matter whether effected by ſurprize) on the natural liberty of the People.

confirmation of the ſame Charter. Laſtly, it has alſo been the Reſiſtance to a King who made no account of his own engagements, that has, in the iſſue, placed on the Throne the family which is now in poſſeſſion of it.

This is not all; this reſource, which till then had only been an act of force, oppoſed to other acts of force, was, at that æra, expreſsly recognized by the Law itſelf. The Lords and Commons, ſolemnly aſſembled, declared, that "King James the Second, having "endeavoured to ſubvert the Conſtitution of "the Kingdom, by breaking the original con-"tract between King and People, and hav-"ing violated the fundamental laws, and "withdrawn himſelf, had abdicated the Go-"vernment; and that the Throne was thereby "vacant (*a*)."

And leſt thoſe principles to which the Revolution thus gave a ſanction, ſhould, in proceſs of time, become mere *arcana* of State, excluſively appropriated, and only known to a certain claſs of Subjects, the ſame Act, we have juſt mentioned, expreſsly inſured to in-

(*a*) The Bill of Rights has ſince given a new ſanction to all theſe principles.

dividuals the right of publicly preferring complaints againſt the abuſes of Government, and moreover, of being provided with arms for their own defence. Judge Blackſtone expreſſes himſelf in the following terms, in his Commentaries on the Laws of England, (B. I. Ch. i.)

"And laſtly, to vindicate thoſe rights, "when actually violated or attacked, the "ſubjects of England are entitled, in the "firſt place, to the regular adminiſtration, "and free courſe of juſtice in the Courts of "Law; next, to the right of petitioning the "King and Parliament for redreſs of griev-"ances; and, laſtly, to the right of having "and uſing arms for ſelf preſervation and de-"fence."

Laſtly, this right of oppoſing violence, in whatever ſhape, and from whatever quarter it may come, is ſo generally acknowledged, that the Courts of Law have ſometimes grounded their judgments upon it. I ſhall relate on this head a fact which is ſomewhat remarkable.

A Conſtable, being out of his precinct, arreſted a woman whoſe name was *Anne Dekins*; one *Tooly* took her part, and, in

the heat of the fray, killed the affiftant of the Conftable.

Being profecuted for murder, he alleged, in his defence, that the illegality of the imprifonment was a fufficient provocation to make the homicide *excufable*, and intitle him to the benefit of Clergy. The Jury having fettled the matter of fact, left the *criminality* of it to be decided by the Judge, by returning a *fpecial verdict*. The caufe was adjourned to the King's Bench; and thence again to Serjeants Inn, for the opinion of the twelve Judges. Here follows the opinion delivered by Chief Juftice Holt, in giving judgment.

"If one be imprifoned upon an unlawful au-"thority, it is a fufficient provocation to all "people, out of compaffion, much more fo "when it is done under colour of juftice; "and when the liberty of the fubject is in-"vaded, it is a provocation to all the fubjects "of England. A Man ought to be concerned "for *Magna Charta* and the laws; and if any "one againft law imprifon a Man, he is an "offender againft Magna Charta." After fome debate, occafioned chiefly by Tooly's appearing not to have known that the Conftable was out of his precinct, feven of the Judges were

of opinion that the priſoner was guilty of Manſlaughter, and he was admitted to the benefit of Clergy (*a*).

But it is with reſpect to this right of an ultimate reſiſtance, that the advantage of a free preſs appears in a moſt conſpicuous light. As the moſt important rights of the People, without the proſpect of a reſiſtance which overawes thoſe who ſhould attempt to violate them, are little more than mere ſhadows,—ſo this right of *reſiſting*, itſelf, is but vain, when there exiſts no means of effecting a general union between the different parts of the People.

Private individuals, unknown to each other, are forced to bear in ſilence injuries in which they do not ſee other people take a concern. Left to their own individual ſtrength, they tremble before the formidable and ever-ready power of thoſe who govern; and as theſe latter well know, nay, are apt to over-rate the advantages of their own ſituation, they think that they may venture upon any thing.

But when they ſee that all their actions are expoſed to public view,—that in conſequence of the celerity with which all things

(*a*) See Reports of Caſes argued, debated, and adjudged in *Banco Reginæ*, in the time of the late Queen Anne.

become communicated, the whole Nation forms, as it were, one continued *irritable* body, no part of which can be touched without exciting an univerſal *tremor*, they become ſenſible that the cauſe of each individual is really the cauſe of all, and that to attack the loweſt among the People, is to attack the whole People.

Here alſo we muſt remark the error of thoſe who, as they make the liberty of the People to conſiſt in their power, ſo make their power conſiſt in their action.

When the People are often called to act in their own perſons, it is impoſſible for them to acquire any exact knowledge of the ſtate of things. The event of one day effaces the notions which they had begun to adopt on the preceding day; and amidſt the continual change of things, no ſettled principle, and above all no plans of union, have time to be eſtabliſhed among them.—You wiſh to have the People love and defend their laws and liberty; leave them, therefore, the neceſſary time to know what laws and liberty are, and to agree in their opinion concerning them;—you wiſh an union, a *coalition*, which cannot be obtained but by a ſlow and peaceable *proceſs*, forbear therefore continually to ſhake the veſſel.

Nay farther, it is a contradiction, that the People ſhould *act* and at the ſame time retain any real power. Have they, for inſtance, been forced by the weight of public oppreſſion to throw off the reſtraints of the law, from which they no longer received protection, they preſently find themſelves ſuddenly become ſubject to the command of a few Leaders, who are the more abſolute in proportion as the nature of their power is leſs clearly aſcertained: nay, perhaps, they muſt even ſubmit to the toils of war and to military diſcipline.

If it be in the common and legal courſe of things that the People are called to move, each individual is obliged, for the ſucceſs of the meaſures in which he is then made to take a concern, to join himſelf to ſome party; nor can this party be without a Head. The Citizens thus grow divided among themſelves, and contract the pernicious habit of ſubmitting to Leaders. They are, at length, no more than the clients of a certain number of Patrons; and the latter ſoon becoming able to command the arms of the Citizens in the ſame manner as they at firſt governed their votes, make little account of a People with one part of which they know how to curb the other.

But when the moving ſprings of Government are placed entirely out of the body of the People, their action is thereby diſengaged from all that could render it complicated, or hide it from the eye. As the People thenceforward conſider things ſpeculatively, and are, if I may be allowed the expreſſion, only ſpectators of the game, they acquire juſt notions of things; and as theſe notions, amidſt the general quiet, get ground and ſpread themſelves far and wide, they at length entertain, on the ſubject of their liberty, but one opinion.

Forming thus, as it were, one body, the People, at every inſtant, have it in their power to ſtrike the deciſive blow which is to level every thing. Like thoſe mechanical powers the greateſt efficiency of which exiſts at the inſtant which precedes their entering into action, it has an immenſe force, juſt becauſe it does not yet exert any; and in this ſtate of ſtillneſs, but of attention, conſiſts its true *momentum*.

With regard to thoſe who (whether from perſonal privileges, or by virtue of a commiſſion from the People) are intruſted with the active part of Government, as they, in the mean while, ſee themſelves expoſed to

public view, and obſerved as from a diſtance by Men free from the ſpirit of party, and who place in them but a conditional truſt, they are afraid of exciting a commotion which, though it might not prove the deſtruction of all power, yet would ſurely and immediately be the deſtruction of their own. And if we might ſuppoſe that, through an extraordinary conjunction of circumſtances, they ſhould reſolve among themſelves upon the ſacrifice of thoſe laws on which public liberty is founded, they would no ſooner lift up their eyes towards that extenſive Aſſembly which views them with a watchful attention, than they would find their public virtue return upon them, and would make haſte to reſume that plan of conduct out of the limits of which they can expect nothing but ruin and perdition.

In ſhort, as the body of the People cannot act without either ſubjecting themſelves to ſome Power, or effecting a general deſtruction, the only ſhare they can have in a Government with advantage to themſelves, is not to interfere, but influence,—to be able to act, and not to act.

The power of the People is not when they ſtrike, but when they keep in awe: it is

when they can overthrow every thing, that they never need to move; and Manlius included all in four words, when he ſaid to the People of Rome, *Oſtendite bellum, pacem habebitis.*

CHAP. XIV.

Proofs drawn from Facts, of the Truth of the Principles laid down in the preſent Work.— 1. The peculiar Manner in which Revolutions have always been concluded in England.

IT may not be ſufficient to have proved by arguments the advantages of the Engliſh Conſtitution: it will perhaps be aſked, whether the effects correſpond to the theory? To this queſtion (which I confeſs is extremely proper) my anſwer is ready; it is the ſame which was once made, I believe, by a Lacedæmonian, *Come and ſee.*

If we peruſe the Engliſh Hiſtory, we ſhall be particularly ſtruck with one circumſtance to be obſerved in it, and which diſtinguiſhes moſt advantageouſly the Engliſh Government from all other free governments; I mean the

manner in which Revolutions and public commotions have always been terminated in England.

If we read with ſome attention the Hiſtory of other free ſtates, we ſhall ſee that the public diſſenſions that have taken place in them, have conſtantly been terminated by ſettlements in which the intereſts only of a few were really provided for; while the grievances of the many were hardly, if at all, attended to. In England the very reverſe has happened, and we find Revolutions always to have been terminated by extenſive and accurate proviſions for ſecuring the general liberty.

The Hiſtory of the ancient Grecian Commonwealths, but above all of the Roman Republic, of which more complete accounts have been left us, afford ſtriking proof of the former part of this obſervation.

What was, for inſtance, the conſequence of that great Revolution by which the Kings were driven from Rome, and in which the Senate and Patricians acted as the adviſers and leaders of the People? The conſequence was, as we find in Dionyſius of Halicarnaſſus, and Livy, that the Senators immediately aſſumed all thoſe powers lately ſo much complained of by themſelves, which the Kings

had exercifed. The execution of their future decrees was intrufted to two Magiftrates, taken from their own body, and entirely dependent on them, whom they called *Confuls*, and who were made to bear about them all the enfigns of power which had formerly attended the Kings. Only, care was taken that the axes and *fafces*, the fymbols of the power of life and death over the Citizens, which the Senate now claimed to itfelf, fhould not be carried before both Confuls at once, but only before one at a time, for fear, fays Livy, of doubling the terror of the People (*a*).

Nor was this all: the Senators drew over to their party thofe Men who had the moft intereft at that time among the People, and admitted them as Members into their own body (*b*); which indeed was a precaution they could not prudently avoid taking. But the interefts of the great Men in the Republic being thus provided for, the Revolution ended. The new Senators, as well as the old, took care not to leffen, by making provifions for the

(*a*) " Omnia jura *(Regum)* omnia infignia, primi Confules " tenuere; id modò cautum eft ne fi ambo fafces haberent, " duplicatus terror videretur." *Tit. Liv.* lib. ii. § 1.

(*b*) Thefe new Senators were called *confcripti*: hence the name of *Patres Confcripti*, afterwards indifcriminately given to the whole Senate.—*Tit. Liv.* ibid.

liberty of the People, a power which was now become their own. Nay, they presently ſtretched this power beyond its former tone; and the puniſhments which the Conſul inflicted in a military manner on a number of thoſe who ſtill adhered to the former mode of Government, and even upon his own children, taught the People what they had to expect for the future, if they preſumed to oppoſe the power of thoſe whom they had thus unwarily made their Maſters.

Among the oppreſſive laws, or uſages, which the Senate, after the expulſion of the Kings, had permitted to continue, thoſe which were moſt complained of by the People, were thoſe by which thoſe Citizens who could not pay their debts with the intereſt (which at Rome was enormous) at the appointed time, became ſlaves to their creditors, and were delivered over to them bound with cords, hence the word *Nexi*, by which that kind of Slaves were denominated. The cruelties exerciſed by Creditors on thoſe unfortunate Men, whom the private calamities cauſed by the frequent wars in which Rome was engaged, rendered very numerous, at laſt rouſed the body of the People: they abandoned both the City and their inhuman fellow-citizens, and retreated to the other ſide of the river *Anio*.

But this ſecond Revolution, like the former, only procured the advancement of particular perſons. A new office was created, called the Tribuneſhip. Thoſe whom the People had placed at their head when they left the City, were raiſed to it. Their duty, it was agreed, was for the future to protect the Citizens; and they were inveſted with a certain number of prerogatives for that purpoſe. This Inſtitution, it muſt however be confeſſed, would have, in the iſſue, proved very beneficial to the People, at leaſt for a long courſe of time, if certain precautions had been taken with reſpect to it, which would have much leſſened the future perſonal importance of the new Tribunes (*a*): but theſe precautions the latter did not think proper to ſuggeſt; and in regard to thoſe abuſes themſelves which had at firſt given riſe to the complaints of the People, no farther mention was made of them (*b*).

As the Senate and Patricians, in the early ages of the Commonwealth, kept cloſely united together, the Tribunes, for all their perſonal

(*a*) Their number, which was only Ten, ought to have been much greater; and they never ought to have accepted the power left to each of them, of ſtopping by his ſingle oppoſition the proceedings of all the reſt.

(*b*) A number of ſeditions were afterwards raiſed upon the ſame account.

privileges, were not able, however, during the firſt times after their creation, to gain an admittance either to the Conſulſhip, or into the Senate, and thereby to ſeparate their condition any farther from that of the People. This ſituation of theirs, in which it was to be wiſhed they might always have been kept, produced at firſt excellent effects, and cauſed their conduct to anſwer in a great meaſure the expectations of the People. The Tribunes complained loudly of the exorbitancy of the powers poſſeſſed by the Senate and Conſuls; and here we muſt obſerve, that the power exerciſed by theſe latter over the lives of the Citizens, had never been yet ſubjected (which will probably ſurpriſe the Reader) to any known laws, though ſixty years had already elapſed ſince the expulſion of the Kings. The Tribunes therefore inſiſted, that laws ſhould be made in that reſpect, which the Conſuls ſhould thenceforwards be bound to follow; and that they ſhould no longer be left, in the exerciſe of their power over the lives of the Citizens, to their own caprice and wantonneſs (*a*).

(*a*) "Quod Populus in ſe jus dederit, eo Conſulem "uſ urum; non ipſos libidinem ac licentiam ſuam pro lege "habituros."—*Tit. Liv.* lib. iii. § 9.

Equitable as theſe demands were, the Senate and Patricians oppoſed them with great warmth, and either by naming Dictators, or calling in the aſſiſtance of the Prieſts, or other means, they defeated for nine years together all the endeavours of the Tribunes. However, as the latter were at that time in earneſt, the Senate was at length obliged to comply; and the *Lex Terentilla* was paſſed, by which it was enacted, that a general Code of Laws ſhould be made.

Theſe beginnings ſeemed to promiſe great ſucceſs to the cauſe of the People. But, unfortunately for them, the Senate found means to have it agreed, that the office of Tribune ſhould be ſet aſide during the whole time that the Code ſhould be framing. They moreover obtained, that the ten Men, called Decemvirs, to whom the charge of compoſing this Code was to be given, ſhould be taken from the body of the Patricians. The ſame cauſes, therefore, produced again the ſame effects; and the power of the Senate and Conſul was left in the new Code, or laws of the Twelve Tables, as undefined as before, As to the laws above mentioned, concerning debtors, which never had ceaſed to be bitterly complained of by the People, and in regard to which ſome ſatisfaction ought, in com-

mon juſtice, to have been given them, they were confirmed, and a new terror added to them from the manner in which they were worded.

The true motive of the Senate, when they thus truſted the framing of the new laws to a new kind of Magiſtrates, called Decemvirs, was that, by ſuſpending the ancient office of Conſul, they might have a fair pretence for ſuſpending alſo the office of Tribune, and thereby rid themſelves of the People, during the time that the important buſineſs of framing the Code ſhould be carrying on: they even, in order the better to ſecure that point, placed the whole power in the Republic, in the hands of theſe new Magiſtrates. But the Senate and Patricians experienced then, in their turn, the danger of entruſting Men with an uncontrolled authority. As they themſelves had formerly betrayed the truſt which the People had placed in them, ſo did the Decemvirs, on this occaſion, likewiſe deceive them. They retained, by their own private authority, the unlimited power that had been conferred on them, and at laſt exerciſed it on the Patricians as well as the Plebeians. Both parties therefore united againſt them, and the Decemvirs were expelled from the City.

The former dignities of the Republic were reſtored, and with them the office of Tribune. Thoſe from among the People who had been moſt inſtrumental in deſtroying the power of the Decemvirs, were, as it was natural, raiſed to the Tribuneſhip; and they entered upon their offices poſſeſſed of a prodigious degree of popularity. The Senate and the Patricians were, at the ſame time, ſunk extremely low in conſequence of the long tyranny which had juſt expired; and thoſe two circumſtances united, afforded the Tribunes but too eaſy an opportunity of making the preſent Revolution end as the former ones had done, and converting it to the advancement of their own power. They got new perſonal privileges to be added to thoſe which they already poſſeſſed, and moreover procured a law to be enacted, by which it was ordained, that the reſolutions taken by the *Comitia Tributa* (an Aſſembly in which the Tribunes were admitted to propoſe new laws) ſhould be binding upon the whole Commonwealth:—by which they at once raiſed to themſelves an *imperium in imperio*, and acquired, as Livy expreſſes it, a moſt active weapon (*a*).

(*a*) *Acerrimum telum.*

From that time great commotions aroſe in the Republic, which, like all thoſe before them, ended in promoting the power of a *few*.—Propoſals for eaſing the People of their debts, for dividing with ſome equality amongſt the Citizens the lands which were taken from the enemy, and for lowering the rate of the intereſt of money, were frequently made by the Tribunes. And indeed all theſe were excellent regulations to propoſe; but, unfortunately for the People, the propoſals of them were only pretences made uſe of by the Tribunes for promoting ſchemes of a fatal, though ſomewhat remote, tendency to public liberty. Their real aims were at the Conſulſhip, the Prætorſhip, the Prieſthood, and other offices of Executive power, which they were intended to controul, and not to ſhare. To theſe views they conſtantly made the cauſe of the People ſubſervient:—I ſhall relate, among other inſtances, the manner in which they procured to themſelves an admittance to the office of Conſul.

Having, during ſeveral years, ſeized every opportunity of making ſpeeches to the People on that ſubject, and even excited ſeditions in order to overcome the oppoſition of the Senate, they at laſt availed themſelves of the

circumſtance of an *interregnum* (a time, during which there happened to be no other Magiſtrates in the Republic beſides themſelves) and propoſed to the Tribes, whom they had aſſembled, to enact the three following laws: — the firſt, for ſettling the rate of intereſt of money; the ſecond, for ordaining that no Citizen ſhould be poſſeſſed of more than five hundred acres of land; and the third, for providing that one of the two Conſuls ſhould be taken from the body of the Plebeians. But on this occaſion it evidently appeared, ſays Livy, which of the laws in agitation were moſt agreeable to the People, and which to thoſe who propoſed them; for the Tribes accepted the laws concerning the intereſt of money, and the lands; but as to that concerning the Plebeian Conſulſhip, they rejected it, and both the former articles would from that moment have been ſettled, if the Tribunes had not declared, that the Tribes were called upon, either to accept, or reject, all their three propoſals at once (*a*).

(*a*) "Ab Tribunis, velut per interregnum, concilio "Plebis habito, apparuit quæ ex promulgatis Plebi, quæ "latoribus, gratiora eſſent; nam de fœnore atque agro "rogationes jubebant, de plebeio Conſulatu antiquabant "*(antiquis ſtabant)*: & perfecta utraque res eſſet, ni Tri"buni ſe in omnia ſimul conſulere Plebem dixiſſent."— *Tit. Liv.* lib. vi. § 39.

Great commotions enſued thereupon, for a whole year; but at laſt the Tribunes, by their perſeverance in inſiſting that the Tribes ſhould vote on their three *rogations*, jointly, obtained their ends, and overcame both the oppoſition of the Senate, and the reluctance of the People.

In the ſame manner did the Tribunes get themſelves made capable of filling all other places of executive power, and public truſt, in the Republic. But when all their views of that kind were accompliſhed, the Republic did not for all this enjoy more quiet, nor was the intereſt of the People better attended to, than before. New ſtruggles then aroſe for actual admiſſion to thoſe places, for procuring them to relations, or friends; for governments of provinces, and commands of armies. A few Tribunes, indeed, did at times apply themſelves ſeriouſly, out of real virtue and love of their duty, to remedy the grievances of the People; but both their fellow Tribunes, as we may ſee in Hiſtory, and the whole body of thoſe Men upon whom the People had, at different times, beſtowed Conſulſhips, Ædileſhips, Cenſorſhips, and other dignities without number, united together with the utmoſt vehe-

mence againſt them ; and the real Patriots, ſuch as Tiberius Gracchus, Caius Gracchus, and Fulvius, conſtantly periſhed in the attempt.

I have been ſomewhat explicit on the effects produced by the different Revolutions that have happened in the Roman Republic, becauſe its Hiſtory is much known to us, and we have, either in Dionyſius of Halicarnaſſus, or Livy, conſiderable monuments of the more ancient part of it. But the Hiſtory of the Grecian Commonwealths would alſo have ſupplied us with a number of facts to the ſame purpoſe: that Revolution, for inſtance, by which the *Piſiſtratidæ* were driven out of Athens—that by which the *Four hundred*, and afterwards the *Thirty*, were eſtabliſhed, a well as that by which the latter were in their turn expelled, all ending in ſecuring the power of *a few*.——The Republic of Syracuſe, that of Corcyra, of which Thucydides has left us a pretty full account, and that of Florence, of which Machiavel has written the Hiſtory, alſo preſent us a ſeries of public commotions ended by treaties, in which, as in the Roman Republic, the grievances of the People, though ever ſo loudly complained of in the beginning by thoſe who acted as their defenders, were,

in the iſſue, moſt careleſsly attended to, or even totallydiſregarded (*a*).

But if we turn our eyes towards the Engliſh Hiſtory, ſcenes of a quite different kind will offer to our view; and we ſhall find, on the contrary, that Revolutions in England have always been terminated by making ſuch proviſions, and only ſuch, as all orders of the People were really and indiſcriminately to enjoy.

Moſt extraordinary facts, theſe! and which, from all the other circumſtances that accompanied them, we ſee, all along, to have been owing to the impoſſibility (a point that has been ſo much inſiſted upon in former Chapters) in which thoſe who poſſeſſed the confidence of the People, were, of transferring to themſelves any branch of the Executive authority, and thus ſeparating their own condition from that of the reſt of the People.

(*a*) The Revolutions which have formerly happened in France, have all ended like the above mentioned: of this a remarkable inſtance may be ſeen in the note (*a*) p. 29, 30, of this Work. The ſame facts are alſo to be obſerved in the Hiſtory of Spain, Denmark, Sweden, Scotland, &c.; but I have avoided mentioning States of a Monarchical form, till ſome obſervations are made, which the Reader will find in the XVIIth Chapter.

Without mentioning the compacts which were made with the firſt Kings of the Norman line, let us only caſt our eyes on *Magna Charta*, which is ſtill the foundation of Engliſh liberty. A number of circumſtances which have been deſcribed in the former part of this work, concurred at that time to ſtrengthen the Regal power to ſuch a degree that no Men in the State could entertain a hope of ſucceeding in any other deſign than that of ſetting bounds to it. How great was the union which thence aroſe among all orders of the People!—what extent, what caution, do we ſee in the proviſions made by the Great Charter! All the objects for which Men naturally wiſh to live in a ſtate of Society, were ſettled in its thirty-eight Articles. The judicial authority was regulated. The perſon and property of the individual were ſecured. The ſafety of the Merchant and ſtranger was provided for. The higher claſs of Citizens gave up a number of oppreſſive privileges which they had long ſince accuſtomed themſelves to look upon as their undoubted rights (*a*). Nay, the imple-

(*a*) All poſſeſſors of lands took the engagement to eſtabliſh in behalf of their Tenants and Vaſſals *(erga ſuos)* the ſame liberties which they demanded from the King.—*Mag. Char.* cap. xxxviii.

ments of tillage of the *Bondman*, or Slave, were alſo ſecured to him: and for the firſt time perhaps in the annals of the World, a civil war was terminated by making ſtipulations in favour of thoſe unfortunate men to whom the avarice and luſt of dominion inherent in human Nature, continued, over the greateſt part of the Earth, to deny the common rights of Mankind.

Under Henry the Third great diſturbances aroſe; and they were all terminated by ſolemn confirmations given to the Great Charter. Under Edward I. Edward II. Edward III. and Richard II. thoſe who were intruſted with the care of the intereſts of the People loſt no opportunity that offered of ſtrengthening ſtill farther that foundation of public liberty; of taking all ſuch precautions as might render the Great Charter ſtill more effectual in the event.—They had not ceaſed to be convinced that their cauſe was the ſame with that of all the reſt of the People.

Henry of Lancaſter having laid claim to the Crown, the Commons received the law from the victorious party. They ſettled the Crown upon Henry, by the name of Henry the Fourth; and added to the Act of Settlement, proviſions which the Reader may ſee in

the ſecond Volume of the *Parliamentary Hiſtory* of England. Struck with the wiſdom of the conditions demanded by the Commons, the Authors of the Book juſt mentioned obſerve (perhaps with ſome ſimplicity), that the Commons of England *were no fools at that time.* They ought rather to have ſaid;—The Commons of England were happy enough to form among themſelves an Aſſembly in which every one could propoſe what matters he pleaſed, and freely diſcuſs them;—they had no poſſibility left of converting either theſe advantages, or in general the confidence which the People had placed in them, to any private views of their own: they, therefore, without loſs of time endeavoured to ſtipulate uſeful conditions with that power by which they ſaw themſelves at every inſtant expoſed to be diſſolved and diſperſed, and applied their induſtry to inſure the ſafety of the whole People, as it was the only means they had of procuring their own.

In the long contentions which took place between the Houſes of York and Lancaſter, the Commons remained ſpectators of diſorders which, in thoſe times, it was not in their power to prevent: they ſucceſſively acknowledged the title of the victorious parties; but

whether under Edward the Fourth, under Richard the Third, or Henry the Seventh, by whom thofe quarrels were terminated, they continually availed themfelves of the importance of the fervices which they were able to perform, to the new eftablifhed Sovereign, for obtaining effectual conditions in favour of the whole body of the People.

At the acceffion of James the Firft, which, as it placed a new family on the Throne of England, may be confidered as a kind of Revolution, no demands were made by the Men who were at the head of the Nation, but in favour of general liberty.

After the acceffion of Charles the Firft, difcontents of a very ferious nature began to take place, and they were terminated in the firft inftance, by the act called the *Petition of Right*, which is ftill looked upon as a moft precife and accurate delineation of the rights of the People (*a*).

(*a*) The diforders which took place in the latter part of the reign of that Prince, feem indeed to contain a complete contradiction of the affertion which is the fubject of the prefent Chapter; but they, at the fame time, are a no lefs convincing confirmation of the truth of the principles laid down in the courfe of this whole Work. The above mentioned diforders took rife from that day in

At the Reſtoration of Charles the Second, the Conſtitution being re-eſtabliſhed upon its former principles, the former conſequences produced by it began again to take place; and we ſee at that æra, and indeed during the whole courſe of that reign, a continued ſeries of precautions taken for ſecuring the general liberty.

Laſtly, the great event which took place in the year 1689, affords a ſtriking confirmation of the truth of the obſervation made in this Chapter. At this æra the political wonder again appeared—of a Revolution terminated by a ſeries of public Acts in which no intereſts but thoſe of the People at large were conſidered and provided for; — no clauſe, even the moſt indirect, was inſerted, either to gratify the preſent ambition, or favour the future views, of thoſe who were perſonally concerned in bringing thoſe acts to a concluſion. Indeed, if any thing is capable of conveying to us an adequate idea of the ſoundneſs, as well as peculiarity, of the principles

which Charles the Firſt gave up the power of diſſolving his Parliament; that is, from the day in which the Members of that Aſſembly acquired an independent, perſonal, permanent authority, which they ſoon began to turn againſt the People who had raiſed them to it.

on which the Englifh Government is founded, it is the attentive perufal of the Syftem of public Compacts to which the Revolution of the year 1689, gave rife,—of the Bill of Rights with all its different claufes, and of the feveral Acts which under two fubfequent Reigns, till the Acceffion of the Houfe of Hanover, were made in order to ftrengthen it.

CHAP. XVI.

Second Difference—The Manner after which the Laws for the Liberty of the Subject are executed in England.

THE fecond difference I mean to fpeak of, between the Englifh Government, and that of other free States, concerns the important object of the execution of the Laws. On this article, alfo, we fhall find the advantage to lie on the fide of the Englifh Government; and, if we make a comparifon between the Hiftory of thofe States and that

of England, it will lead us to the following obſervation, viz. that though in other free States the laws concerning the Liberty of the Citizens were imperfect, yet the execution of them was ſtill more defective. In England, on the contrary, the laws for the ſecurity of the Subject are not only very extenſive in their proviſions, but the manner in which they are executed, carries theſe advantages ſtill farther; and Engliſh Subjects enjoy no leſs liberty from the ſpirit both of juſtice and mildneſs, by which all branches of the Government are influenced, than from the accuracy of the laws themſelves.

The Roman Commonwealth will here again ſupply us with examples to prove the former part of the above aſſertion. When I ſaid, in the foregoing Chapter, that, in times of public commotion, no proviſions were made for the body of the People, I meant no proviſions that were likely to prove effectual in the event. When the people were rouſed to a certain degree, or when their concurrence was neceſſary to carry into effect certain reſolutions, or meaſures, that were particularly intereſting to the Men in power, the latter could not, with any prudence, openly profeſs a contempt for the

political wiſhes of the People ; and ſome declarations expreſſed in general words, in favour of public liberty, were indeed added to the laws that were enacted on thoſe occaſions. But theſe declarations, and the principles which they tended to eſtabliſh, were afterwards even openly diſregarded in practice.

Thus, when the People were made to vote, about a year after the expulſion of the Kings, that the Regal Government never ſhould be again eſtabliſhed in Rome, and that thoſe who ſhould endeavour to reſtore it, ſhould be devoted to the Gods, an article was added which, in general terms, confirmed to the Citizens the right they had before enjoyed under the King, of appealing to the People from the ſentences of death paſſed upon them. No puniſhment (which will ſurpriſe the Reader) was decreed againſt thoſe who ſhould violate this law; and indeed the Conſuls, as we may ſee in Dionyſius of Halicarnaſſus and Livy, concerned themſelves but little about the appeals of the Citizens, and in the more than military exerciſe of their functions, continued to ſport with rights which they ought to have reſpected, however imperfectly and looſely they had been ſecured.

An article to the ſame purport with the above, was afterwards alſo added to the laws of the Twelve Tables; but the Decemvirs, to whom the execution of thoſe laws was at firſt committed, behaved exactly in the ſame manner and even worſe than the Conſuls had done before them: and after they were expelled (*a*), the Magiſtrates who ſucceeded them appear to have been as little tender of the lives of the Citizens. I ſhall, among many inſtances, relate one which will ſhew upon what ſlight grounds the Citizens were expoſed to have their lives taken away, —— Spurius Mælius being accuſed of endeavouring to make himſelf King, was ſummoned by the Maſter of the Horſe, to appear before the Dictator, in order to clear himſelf of this ſomewhat extraordinary imputation. Spurius took refuge among the People; the Maſter of the Horſe purſued him, and killed him on the ſpot. The multitude

(*a*) At the time of the expulſion of the Decemvirs, a law was alſo enacted, that no Magiſtrate ſhould be created from whom no appeal could be made to the People (*Magiſtratus ſine provocatione. Tit. Liv.* lib. iii. § 55.) by which the people expreſsly meant to aboliſh the Dictatorſhip: but, from the fact that will juſt now be related, and which happened about ten years afterwards, we ſhall ſee that this law was not better obſerved than the former ones had been.

having thereupon expreſſed a great indignation, the Dictator had them called to his Tribunal, and declared that Spurius had been lawfully put to death, even though he might be innocent of the crime laid to his charge, for having refuſed to appear before the Dictator, when ſummoned to do ſo by the Maſter of the Horſe (*a*).

About one hundred and forty years after the times we mention, the law concerning the appeals to the People was enacted for the third time. But we do not ſee that it was better obſerved afterwards than it had been before: we find it frequently violated, ſince that period, by the different Magiſtrates of the Republic, and the Senate itſelf, notwithſtanding this ſame law, at times, made formidable examples of the Citizens. Of this we have an inſtance in the three hundred ſoldiers who had pillaged the town of Rhegium. The Senate, of its own authority, ordered them all to be put to death. In vain did the Tribune Flaccus remonſtrate againſt ſo ſevere an

(*a*) Tumultuantem deinde multitudinem, incerta exiſtimatione facti, ad concionem vocari juſſit, & *Mælium jure cæſum* pronunciavit, *etiamſi regni crimine inſons fuerit, qui vocatus à Magiſtro equitum, ad Dictatorem non veniſſet.* Tit. Liv. lib. iv. § 15.

exertion of public juſtice on Roman Citizens: the Senate, ſays Valerius Maximus, nevertheleſs perſiſted in its reſolution (*a*).

All theſe laws for ſecuring the lives of the Citizens, had hitherto been enacted without any mention being made of a puniſhment againſt thoſe who ſhould violate them. At laſt the celebrated *Lex Porcia* was paſſed, which ſubjected to baniſhment thoſe who ſhould cauſe a Roman Citizen to be ſcourged and put to death. From a number of inſtances poſterior to this law, it appears, that it was not better obſerved than thoſe before it had been: Caius Gracchus, therefore, cauſed the *Lex Sempronia* to be enacted, by which a new ſanction was given to it. But this ſecond law did not ſecure his own life, and that of his friends, better than the *Lex Porcia* had done that of his brother, and thoſe who had ſup-

(*a*) Val. Max. book ii. c. 7. This author does not mention the preciſe number of thoſe who were put to death on this occaſion; he only ſays that they were executed fifty at a time, in different ſucceſſive days; but other Authors make the number of them amount to four thouſand. Livy ſpeaks of a whole Legion.—*Legio Campana quæ Rhegium occupaverat, obſeſſa, deditione factâ, ſecuri percuſſa eſt.*—*Tit. Liv.* lib. xv. *Epit.*—I have here followed Polybius, who ſays that only three hundred were taken and brought to Rome.

ported him: indeed, all the events which took place about thofe times, rendered it manifeft that the evil was fuch as was beyond the power of any laws to cure.—I fhall here mention a fact which affords a remarkable inftance of the wantonnefs with which the Roman Magiftrates had accuftomed themfelves to take away the lives of the Citizens. A Citizen, named Memmius, having put up for the Confulfhip, and publicly canvaffing for the fame, in oppofition to a Man whom the Tribune Saturninus fupported, the latter caufed him to be apprehended, and made him expire under blows in the public Forum. The Tribune even carried his infolence fo far, as Cicero informs us, as to give to this act of cruelty, tranfacted in the prefence of the whole People affembled, the outward form of a lawful act of public Juftice (*a*).

(*a*) The fatal forms of words (*cruciatûs carmina*) ufed by the Roman Magiftrates when they ordered a Man to be put to death, refounded (fays Tully in his fpeech for *Rabirius*) in the Affembly of the People, in which the Cenfors had forbidden the common Executioner ever to appear. *I Lictor, colliga manus. Caput obnubito. Arbori infelici fufpendito.*—Memmius being a confiderable Citizen, as we may conclude from his canvaffing with fuccefs for the Confulfhip, all the great Men in the Republic took the alarm at the atrocious action of the Tribune:

Nor were the Roman Magiſtrates ſatisfied with committing acts of injuſtice in their political capacity, and for the ſupport of the power of that Body of which they made a part. Avarice and private rapine were at laſt added to political ambition. The Provinces were firſt oppreſſed and plundered. The calamity in proceſs of time reached Italy itſelf, and the centre of the Republic; till at laſt the *Lex Calpurnia de repetundis* was enacted to put a ſtop to it. By this law an action was given to the Citizens and Allies for the recovery of the money extorted from them by Magiſtrates, or Men in power; and the *Lex Junia* afterwards added the penalty of baniſhment to the obligation of making reſtitution.

But here another kind of diſorder aroſe. The Judges proved as corrupt as the Magiſtrates had been oppreſſive. They equally betrayed, in their own province, the cauſe of the Republic with which they had been intruſted; and rather choſe to ſhare in the plunder of the Conſuls, the Prætors, and the

the Senate, the next day, iſſued out its ſolemn mandate, or form of words, to the Conſuls, *to provide that the Republic ſhould receive no detriment;* and the Tribune was killed in a pitched battle that was fought at the foot of the Capitol.

Proconſuls, than put the laws in force againſt them.

New expedients were, therefore, reſorted to, in order to remedy this new evil. Laws were made for judging and puniſhing the Judges themſelves; and above all, continual changes were made in the manner of compoſing their Aſſemblies. But the malady lay too deep for common legal proviſions to remedy. The guilty Judges employed the ſame reſources in order to avoid conviction, as the guilty Magiſtrates had done; and thoſe continual changes at which we are amazed, that were made in the conſtitution of the judiciary Bodies (*a*), inſtead of obviating the cor-

(*a*) The Judges (over the Aſſembly of whom the Prætor uſually preſided) were taken from the body of the Senate, till ſome years after the laſt Punic War; when the *Lex Sempronia*, propoſed by Caius S. Gracchus, enacted that they ſhould in future be taken from the Equeſtrian Order. The Conſul Cæpio procured afterwards a law to be enacted, by which the Judges were to be taken from both orders equally. The *Lex Servilia* ſoon after put the Equeſtrian Order again in poſſeſſion of the *Judgments*; and, after ſome years, the *Lex Livia* reſtored them entirely to the Senate.—The *Lex Plautia* enacted afterwards, that the Judges ſhould be taken from the three orders; the Senatorian, Equeſtrian, and Plebeian. The *Lex Cornelia*, framed by the Dictator Sylla, enacted again, that the Judges ſhould be entirely taken from the

ruption of the Judges, only transferred to other Men the profit ariſing from becoming guilty of it. It was grown to be a general complaint ſo early as the times of the Gracchi, that no Man who had money to give, could be brought to puniſhment (*a*). Cicero ſays, that in his time, the ſame opinion was become ſettled and univerſally received (*b*); and his Speeches are full of his lamentations on what he calls the *levity*, and the *infamy*, of the public Judgments.

Nor was the impunity of corrupt Judges the only evil under which the Republic laboured. Commotions of the whole Empire at laſt took place. The horrid vexations, and afterwards the acquittal, of Aquilius, Proconſul of Syria, and ſome others who had been guilty of the ſame crimes, drove the Provinces of Aſia to deſperation: and then it was that that terrible war of Mithri-

body of the Senate. The *Lex Aurelia* ordered anew, that they ſhould be taken from the three orders. Pompey made afterwards a change in their number, which he fixed at ſeventy-five, and in the manner of electing them. And laſtly, Cæſar entirely reſtored the Judgments to the Order of the Senate.

(*a*) App. de Bell. Civ.

(*b*) Act. in Verr. i. § i.

dates aroſe, which was uſhered in by the death of eighty thouſand Romans, maſſacred in one day, in all the cities of Aſia (*a*).

The Laws and public Judgments not only thus failed of the end for which they had been eſtabliſhed; they even became, at length, new means of oppreſſion added to thoſe which already exiſted. Citizens poſſeſſed of wealth, perſons obnoxious to particular Bodies, or the few Magiſtrates who attempted to ſtem the torrent of the general corruption, were accuſed and condemned; while Piſo, of whom Cicero in his ſpeech againſt him relates facts which make the Reader ſhudder with horror, and Verres, who had been guilty of enormities of the ſame kind, eſcaped unpuniſhed.

Hence a war aroſe ſtill more formidable than the former, and the dangers of which we wonder that Rome was able to ſurmount. The greateſt part of the Italians revolted at once, exaſperated by the tyranny of the public Judgments; and we find in Cicero, who informs us of the cauſe of this revolt, which was called the *Social war*, a very expreſſive account both of the unfortunate condition of

(*a*) Appian.

the Republic, and of the perverſion that had been made of the methods taken to remedy it. ‘ An hundred and ten years are not yet elapſed ‘ (ſays he) ſince the law for the recovery of ‘ money extorted by Magiſtrates was firſt pro- ‘ pounded by the Tribune Calpurnius Piſo. A ‘ number of other laws to the ſame effect, con- ‘ tinually more and more ſevere, have followed : ‘ but ſo many perſons have been accuſed, ſo ‘ many condemned, ſo formidable a war has ‘ been excited in Italy by the terror of the ‘ public Judgments, and when the laws and ‘ Judgments have been ſuſpended, ſuch an op- ‘ preſſion and plunder of our Allies have pre- ‘ vailed, that we may truly ſay that it is not by ‘ our own ſtrength, but by the weakneſs of ‘ others, that we continue to exiſt (*a*).’

I have entered into theſe particulars with regard to the Roman Commonwealth, becauſe the facts on which they are grounded are remarkable of themſelves, and yet no juſt concluſion can be drawn from them, unleſs a ſeries of them were preſented to the Reader. Nor are we to account for theſe facts, by the Luxury which prevailed in the latter ages of the Republic, by the corruption of

(*a*) See Cic. de Off. lib. ii. § 75.

the manners of the Citizens, their degeneracy from their ancient principles, and ſuch like looſe general phraſes, which may perhaps be uſeful to expreſs the manner itſelf in which the evil became manifeſted, but by no means ſet forth the cauſes of it.

The above diſorders aroſe from the very nature of the Government of the Republic,—of a Government in which the Executive and Supreme Power being made to centre in the Body of thoſe in whom the People had once placed their confidence, there remained no other effectual Power in the State that might render it neceſſary for them to keep within the bounds of juſtice and decency. And in the mean time, as the People, who were intended as a check over that Body, continually gave a ſhare in this Executive authority to thoſe whom they entruſted with the care of their intereſts, they increaſed the evils they complained of, as it were, at every attempt they made to remedy them; and inſtead of raiſing up Opponents to thoſe who were become the enemies of their liberty, as it was their intention to do, they continually ſupplied them with new Aſſociates.

From this ſituation of affairs, flowed as an unavoidable conſequence, that continual deſertion of the cauſe of the People, which, even in time of Revolutions, when the paſſions of the People themſelves were rouſed, and they were in a great degree united, manifeſted itſelf in ſo remarkable a manner. We may trace the ſymptoms of the great political defect here mentioned, in the earlieſt ages of the Commonwealth, as well as in the laſt ſtage of its duration. In Rome, while ſmall and poor, it rendered vain whatever rights or power the People poſſeſſed, and blaſted all their endeavours to defend their liberty, in the ſame manner as, in the more ſplendid ages of the Commonwealth, it rendered the moſt ſalutary regulations utterly fruitleſs, and even inſtrumental to the ambition and avarice of a few. The prodigious fortune of the Republic, in ſhort, did not create the diſorder, it only gave full ſcope to it.

But if we turn our view towards the Hiſtory of the Engliſh Nation, we ſhall ſee how, from a Government in which the above defects did not exiſt, different conſequences have followed :—how cordially all ranks of Men have always united together to lay under proper re-

ſtraints this Executive power, which they knew could never be their own. In times of public Revolutions, the greateſt care, as we have before obſerved, was taken to aſcertain the limits of that Power: and after peace had been reſtored to the State, thoſe who remained at the head of the Nation, continued to manifeſt an unwearied jealouſy in maintaining thoſe advantages which the united efforts of all had obtained.

Thus it was made one of the Articles of Magna Charta, that the Executive Power ſhould not touch the perſon of the Subject, but in conſequence of a judgment paſſed upon him by his Peers; and ſo great was afterwards the general union in maintaining this law, that the *Trial by Jury*, that admirable mode of proceeding which ſo effectually ſecures the Subject againſt all the attempts of Power, even (which ſeemed ſo difficult to obtain) againſt ſuch as might be made under the ſanction of the judicial authority, hath been preſerved to this day. It has even been preſerved in all its original purity, though the ſame has been ſucceſſively ſuffered to decay, and then to be loſt, in the other Countries of Europe, where it had been formerly

known (*a*). Nay, though this privilege of being tried by one's Peers, was at firſt a privilege of Conquerors and Maſters, excluſively appropriated to thoſe parts of Nations which had originally invaded and ſeduced the reſt by arms, it has in England been ſucceſſively extended to every Order of the People.

And not only the perſon, but alſo the property, of the individual, has been ſecured againſt all arbitrary attempts from the Executive power, and the latter has been ſucceſ-

(*a*) The Trial by Jury was in uſe among the Normans long before they came over into England; but it is now utterly loſt in that Province: it even began very early to degenerate there from its firſt inſtitution; we ſee in Hale's Hiſtory of the *Common Law* of England, that the unanimity among Jurymen was not required in Normandy for making a verdict a good verdict; but when Jurymen diſſented, a number of them was taken out, and others added in their ſtead, till an unanimity was procured.—In Sweden, where, according to the opinion of the Learned in that Country, the *Trial by Jury* had its firſt origin, only ſome forms of that inſtitution are now preſerved in the lower Courts in the Chancery, where ſets of Jurymen are eſtabliſhed for life, and have a ſalary accordingly. See *Robertſon's State of Sweden.*—And in Scotland, the vicinity of England has not been able to preſerve to the Trial by Jury its genuine ancient form: the unanimity among Jurymen is not required, as I have been told, to form a verdict; but the majority is deciſive.

ſively reſtrained from touching any part of the property of the Subject even under pretence of the neceſſities of the State, any otherwiſe than by the free grant of the Repreſentatives of the People. Nay, ſo true and perſevering has been the zeal of theſe Repreſentatives in aſſerting on that account the intereſts of the Nation, from which they could not ſeparate their own, that this privilege of taxing themſelves, which was in the beginning grounded on a moſt precarious tenure, and only a mode of governing adopted by the Sovereign for the ſake of his own convenience, has become, in time, a ſettled right of the People, which the Sovereign has found it at length neceſſary ſolemnly and repeatedly to acknowledge.

Nay more, the Repreſentatives of the People have applied this right of *Taxation* to a ſtill nobler uſe than the mere preſervation of property; they have, in proceſs of time, ſucceeded in converting it into a regular and conſtitutional means of influencing the motions of the Executive Power. By means of this Right, they have gained the advantage of being conſtantly called to concur in the meaſures of the Sovereign,—of having the greateſt

attention ſhewn by him to their requeſts, as well as the higheſt regard paid to any engagements that he enters into with them. Thus has it become at laſt the peculiar happineſs of Engliſh Subjects, to whatever other People either ancient or modern we compare them, to enjoy a ſhare in the government of their Country, by electing Repreſentatives, who, by reaſon of the peculiar circumſtances in which they are placed, and of the extenſive rights they poſſeſs, are both *willing* faithfully to ſerve thoſe who have appointed them, and *able* to do ſo.

And indeed the Commons have not reſted ſatisfied with eſtabliſhing, once for all, the proviſions for the liberty of the People which have been juſt mentioned; they have afterwards made the preſervation of them the firſt object of their care (*a*), and taken every opportunity of giving them new vigour and life.

Thus, under Charles the Firſt, when attacks

(*a*) The firſt operation of the Commons at the beginning of a Seſſion, is to appoint four grand Committees. The one is a Committee of Religion, another of Courts of Juſtice, another of Trade, and another of Grievances: they are to be ſtanding Committees during the whole Seſſion.

of a moſt alarming nature were made on the privilege of the People to grant free ſupplies to the Crown, the Commons vindicated, without loſs of time, that great right of the Nation, which is the Conſtitutional bulwark of all others, and haſtened to oppugn in their beginning, every precedent of a practice that muſt in the end have produced the ruin of public liberty.

They even extended their care to abuſes of every kind. The judicial authority, for inſtance, which the Executive Power had imperceptibly aſſumed to itſelf, both with reſpect to the perſon and property of the individual, was abrogated by the Act which aboliſhed the Court of Star Chamber; and the Crown was thus brought back to its true Conſtitutional office; viz. the countenancing, and ſupporting with its ſtrength, the execution of the Laws.

The ſubſequent endeavours of the Legiſlature have carried even to a ſtill greater extent the above privileges of the People. They have moreover ſucceeded in reſtraining the Crown from any attempt to ſeize and confine, even for the ſhorteſt time, the perſon of the Subject, unleſs it be in the caſes aſcertained by the Law, of which the Judges of it are to decide.

Nor has this extenſive unexampled freedom, at the expence of the Executive Power, been made, as we might be inclinable to think, the excluſive appropriated privilege of the great and powerful. It is to be enjoyed alike by all ranks of Subjects. Nay, it was the injury done to a common Citizen that gave exiſtence to the Act which has completed the ſecurity of this intereſting branch of public liberty.—*The oppreſſion of an obſcure individual*, ſays Judge Blackſtone, *gave riſe to the famous Habeas Corpus Act*: Junius has quoted this obſervation of the Judge; and the ſame is well worth repeating a third time, for the juſt idea it conveys of that readineſs of all orders of Men, to unite in defence of common liberty, which is a characteriſtic circumſtance in the Engliſh Government (*a*).

And this general union in favour of public liberty, has not been confined to the framing

(*a*) The individual here alluded to was one Francis Jenks, who having made a motion at Guildhall, in the year 1676, to petition the King for a new Parliament, was examined before the Privy Council, and afterwards committed to the Gate-Houſe, where he was kept about two months, through the delays made by the ſeveral Judges to whom he applied, in granting him a *Habeas Corpus*.—See the *State Trials*, vol. vii. anno 1676.

of laws for its ſecurity: it has operated with no leſs vigour in bringing to puniſhment ſuch as have ventured to infringe them; and the Sovereign has conſtantly found it neceſſary to give up the violators of thoſe laws, even when his own ſervants, to the Juſtice of their Country.

Thus we find, ſo early as the reign of Edward the Firſt, Judges who were convicted of having committed exactions in the exerciſe of their offices, to have been condemned by a ſentence of Parliament (*a*). From the immenſe fines which were laid upon them, and which it ſeems they were in a condition to pay, we may indeed conclude that, in thoſe early ages of the Conſtitution, the remedy was applied rather late to the diſorder; but yet it was at laſt applied.

Under Richard the Second, examples of the ſame kind were renewed. Michael de la Pole, Earl of Suffolk, who had been Lord Chancellor of the kingdom, the Duke of Ireland, and the Archbiſhop of York, having

(*a*) Sir Ralph de Hengham, Chief Juſtice of the King's Bench, was fined 7000 marks; Sir Thomas Wayland, Chief Juſtice of the Common Pleas, had his whole eſtate forfeited; and Sir Adam de Stratton, Chief Baron of the Exchequer, was fined 3400 marks.

abuſed their power by carrying on deſigns that were ſubverſive of public liberty, were declared guilty of High-treaſon; and a number of Judges who, in their judicial capacity, had acted as their inſtruments, were involved in the ſame condemnation (*a*).

Under the reign of Henry the Eighth, Sir Thomas Empſon, and Edmund Dudley, who

(*a*) The moſt conſpicuous among theſe Judges were Sir Robert Belknap, and Sir Robert Treſilian, Chief Juſtice of the King's Bench. The latter had drawn up a ſtring of queſtions calculated to confer a deſpotic authority on the Crown, or rather on the Miniſters above named, who had found means to render themſelves entire Maſters of the perſon of the King. Theſe queſtions Sir Robert Treſilian propoſed to the Judges, who had been ſummoned for that purpoſe, and they gave their opinion in favour of them. One of theſe opinions of the Judges, among others, tended to no leſs than to annihilate, at one ſtroke, all the rights of the Commons, by taking from them that important privilege mentioned before, of ſtarting and freely diſcuſſing whatever ſubjects of debate they think proper: the Commons were to be reſtrained, under pain of being puniſhed as traitors, from proceeding upon any articles beſides thoſe limited to them by the King. All thoſe who had had a ſhare in the above declarations of the Judges, were attainted of high-treaſon. Some were hanged; among them was Sir Robert Treſilian; and the others were only baniſhed, at the interceſſion of the Biſhops. —See the Parl. Hiſtory of England, vol. i.

had been the promoters of the exactions committed under the preceding reign, fell victims to the zeal of the Commons for vindicating the cause of the People. Under King James the First, Lord Chancellor Bacon experienced that neither his high dignity, nor great personal qualifications, could screen him from having the severest censure passed on him, for the corrupt practices of which he had suffered himself to become guilty. And under Charles the First, the Judges having attempted to imitate the example of the Judges under Richard the Second, by delivering opinions subversive of the rights of the People, found the same spirit of watchfulness in the Commons, as had proved the ruin of the former. Lord Finch, Keeper of the Great Seal, was obliged to fly beyond sea. The Judges Davenport and Crawley were imprisoned : and Judge Berkeley was seized while sitting upon the Bench, as we find in Rushworth.

In the reign of Charles the Second, we again find fresh instances of the vigilance of the Commons. Sir William Scroggs, Lord Chief Justice of the King's-Bench, Sir Francis North, Chief Justice of the Common Pleas, Sir Thomas Jones, one of the Judges of the King's-Bench, and Sir Richard Weston, one

of the Barons of the Exchequer, were impeached by the Commons, for partialities ſhewn by them in the adminiſtration of juſtice; and Chief Juſtice Scroggs, againſt whom ſome poſitive charges were well proved, was removed from his employments.

The ſeveral examples offered here to the Reader, have been taken from ſeveral different periods of the Engliſh Hiſtory, in order to ſhew that neither the influence, nor the dignity of the infractors of the laws, even when they have been the neareſt Servants of the Crown, have ever been able to check the zeal of the Commons in aſſerting the rights of the People. Other examples might perhaps be related to the ſame purpoſe; though the whole number of thoſe to be met with, will, upon enquiry, be found the ſmaller, in proportion as the danger of infringing the laws has always been indubitable.

So much regularity has even (from all the circumſtances above mentioned) been introduced into the operations of the Executive Power in England,—ſuch an exact Juſtice have the People been accuſtomed, as a conſequence, to expect from that quarter, that even the Sovereign, for his having once ſuffered himſelf perſonally to violate the ſafety

of the Subject, did not escape severe censure. The attack made by order of Charles the Second, on the person of Sir John Coventry, filled the nation with astonishment; and this violent gratification of private passion, on the part of the Sovereign (a piece of self-indulgence with regard to inferiors, which whole classes of individuals in certain Countries almost think that they have a right to) excited a general ferment. "This event (says Bishop "Burnet) put the House of Commons in a "furious uproar . . . . It gave great advantages "to all those who opposed the Court; and the "names of the *Court* and *Country* party, which "till now had seemed to be forgotten, were "again revived (*a*)."

These are the limitations that have been set, in the English Government, on the operations of the Executive Power: limitations to which we find nothing comparable in any other free States, ancient or modern; and which are owing, as we have seen, to that very circumstance which seemed at first sight

(*a*) See Burnet's History, vol. i. anno 1669.—An Act of Parliament was made on this occasion, for giving a farther extent to the provisions before made for the personal security of the Subject; which is still called the *Coventry* Act.

to prevent the poſſibility of them, I mean the greatneſs and unity of that Power; the effect of which has been, in the event, to unite upon the ſame object, the views and efforts of all Orders of the People.

From this circumſtance, that is, the *unity* and peculiar ſtability of the Executive Power in England, another moſt advantageous conſequence has followed, that has been before noticed, and which it is not improper to mention again here, as this Chapter is intended to confirm the principles laid down in the former ones,—I mean the unremitted continuance of the ſame general union among all ranks of Men, and the ſpirit of mutual juſtice which thereby continues to be diffuſed through all orders of Subjects.

Though ſurrounded by the many boundaries that have juſt now been deſcribed, the Crown, we muſt obſerve, has preſerved its prerogative undivided: it ſtill poſſeſſes its whole effective ſtrength, and is only tied by its own engagements, and the conſideration of what it owes to its deareſt intereſts.

The great, or wealthy men in the Nation, who, aſſiſted by the body of the People, have ſucceeded in reducing the exerciſe of its authority within ſuch well defined limits, can

have no expectation that it will continue to confine itself to them any longer than they themselves continue, by the justice of their own conduct, to deserve that support of the People, which alone can make them appear of consequence in the eye of the Sovereign,—no probable hopes that the Crown will continue to observe those laws by which their wealth, dignity, liberty, are protected, any longer than they themselves also continue to observe them.

Nay more, all those claims of their rights which they continue to make against the Crown, are encouragements which they give to the rest of the People to assert their own rights against them. Their constant opposition to all arbitrary proceedings of that Power, is a continual declaration they make against any acts of oppression which the superior advantages they enjoy, might entice them to commit on their inferior fellow-subjects. Nor was that severe censure, for instance, which they concurred in passing on an unguarded violent action of their Sovereign, only a restraint put upon the personal actions of future English Kings; no, it was a much more extensive provision for the securing of

public liberty;—it was a ſolemn engagement entered into by all the powerful Men in the State to the whole body of the People, ſcrupulouſly to reſpect the perſon of the loweſt among them.

And indeed the conſtant tenor of the conduct even of the two Houſes of Parliament ſhews us, that the above obſervations are not matters of mere ſpeculation. From the earlieſt times we ſee the Members of the Houſe of Commons to have been very cautious not to aſſume any diſtinction that might alienate from them the affections of the reſt of the People (*a*). Whenever thoſe privileges which were neceſſary to them for the diſcharge of their truſt have proved burdenſome to the Community, they have retrenched them. And thoſe of their Members who have ap-

(*a*) In all caſes of public offences, down to a ſimple breach of the peace, the Members of the Houſe of Commons have no privilege whatever above the reſt of the People: they may be committed to priſon by any Juſtice of the Peace; and are dealt with afterwards in the ſame manner as any other Subjects. With regard to civil matters, their only privilege is to be free from Arreſts during the time of a Seſſion, and forty days before, and forty days after; but they may be ſued, by proceſs againſt their goods, for any juſt debt during that time.

plied either these privileges, or in general that influence which they derived from their situation, to any oppressive purposes, they themselves have endeavoured to bring to punishment.

Thus, we see, that in the reign of James the First, Sir Giles Mompesson, a Member of the House of Commons, having been guilty of monopolies, and other acts of great oppression on the People, was not only expelled, but impeached and prosecuted with the greatest warmth by the House, and finally condemned by the Lords to be publicly degraded from his rank of a Knight, held for ever an infamous person, and imprisoned during life.

In the same reign, Sir John Bennet, who was also a Member of the House of Commons, having been found to have been guilty of several corrupt practices, in his capacity of Judge of the *Prerogative* Court of Canterbury, such as taking exorbitant fees, and the like, was expelled the House, and prosecuted for these offences.

In the year 1641, Mr. Henry Benson, Member for Knaresborough, having been detected in selling protections, experienced likewise the indignation of the House, and was expelled.

In fine, in order as it were to make it completely notorious, that neither the condition of Repreſentative of the People, nor even any degree of influence in their Houſe, could excuſe any one of them from ſtrictly obſerving the rules of Juſtice, the Commons did on one occaſion paſs the moſt ſevere cenſure they had power to inflict, upon their Speaker himſelf, for having, in a ſingle inſtance, attempted to convert the diſcharge of his duty as Speaker into a means of private emolument.——Sir John Trevor, Speaker of the Houſe of Commons, having, in the ſixth year of the reign of King William, received a thouſand guineas from the City of London, "as a gratuity for the trouble he had taken with regard to the paſſing of the *Orphan Bill,*" was voted guilty of a High crime and miſdemeanor, and expelled the Houſe. Even the inconſiderable ſum of twenty guineas which Mr. Hungerford, another Member, had been weak enough to accept on the ſame ſcore, was looked upon as deſerving the notice of the Houſe, and he was likewiſe expelled (*a*).

(*a*) Other examples of the attention of the Houſe of Commons to the conduct of their Members, might be produced either before, or after, that which is mentioned here. The reader may, for inſtance, ſee the re-

If we turn our view towards the Houſe of Lords, we ſhall find that they have alſo conſtantly taken care that their peculiar privileges ſhould not prove impediments to the common juſtice which is due to the reſt of the People (*a*). They have conſtantly agreed to every juſt propoſal that has been made to them on that ſubject by the Commons: and indeed, if we conſider the numerous and oppreſſive privileges claimed by the *Nobles* in moſt other Countries, and the vehement ſpirit with which they are commonly aſſerted, we ſhall think it no ſmall praiſe to the body of the Nobility in England (and alſo to the nature of that Government of which they make a part) that it has been by their free conſent

lation of their proceedings in the affair of the *South Sea Company* Scheme; and a few years after, in that of the *Charitable Corporation;* a fraudulent ſcheme particularly oppreſſive to the poor, for which ſeveral Members were expelled.

(*a*) In caſe of a public offence, or even a ſimple breach of the peace, a Peer may be committed, till he finds bail, by any Juſtice of the Peace: and Peers are to be tried by the common courſe of law, for all offences under felony. With regard to civil matters, they are at all times free from *arreſts;* but execution may be had againſt their effects, in the ſame manner as againſt thoſe of other Subjects.

that their privileges have been confined to what they now are; that is to ſay, to no more, in general, than what is neceſſary to the accompliſhment of the end and conſtitutional deſign of that Houſe.

In the exerciſe of their Judicial authority with regard to civil matters, the Lords have manifeſted a ſpirit of equity nowiſe inferior to that which they have ſhewn in their Legiſlative capacity. They have, in the diſcharge of that function (which of all others is ſo liable to create temptations), ſhewn an uncorruptneſs really ſuperior to what any judicial Aſſembly in any other Nation can boaſt. Nor do I think that I run any riſk of being contradicted, when I ſay that the conduct of the Houſe of Lords, in their civil judicial capacity, has conſtantly been ſuch as has kept them above the reach of even ſuſpicion or ſlander.

Even that privilege which they enjoy, of excluſively trying their own Members in caſe of any accuſation that may affect their life (a privilege which we might at firſt ſight think repugnant to the idea of a regular Government, and even alarming to the reſt of the People) has conſtantly been made uſe of

by the Lords to do juſtice to their fellow-ſubjects; and if we caſt our eyes either on the collection of the *State Trials*, or on the Hiſtory of England, we ſhall find very few examples, if any, of a Peer, really guilty of the offence laid to his charge, that has derived any advantage from his not being tried by a Jury of *Commoners*.

Nor has this juſt and moderate conduct of the two Houſes of Parliament in the exerciſe of their powers (a moderation ſo unlike what has been related of the conduct of the powerful Men in the Roman Republic) been the only happy conſequence of that ſalutary jealouſy which thoſe two Bodies entertain of the power of the Crown. The ſame motive has alſo engaged them to exert their utmoſt endeavours to put the Courts of Juſtice under proper reſtraints: a point of the higheſt importance to public liberty.

They have, from the earlieſt times, preferred complaints againſt the influence of the Crown over theſe Courts, and at laſt procured Laws to be enacted by which ſuch influence has been entirely prevented: all which meaſures, we muſt obſerve, were at the ſame time ſtrong declarations that no Subjects, however exalted their rank might be, were to think themſelves exempt from ſubmitting to the uniform courſe

of the Law, or hope to influence or over-awe it. The fevere examples which they have united to make on thofe Judges who had rendered themfelves the inftruments of the paffions of the Sovereign, or of the defigns of the Minifters of the Crown, are alfo awful warnings to the Judges who have fucceeded them, never to attempt to deviate in favour of any, the moft powerful individuals, from that ftrait line of Juftice which the joint wifdom of the Legiflature has once marked out to them.

This fingular fituation of the Englifh Judges relatively to the three Conftituent Powers of the State (and alfo the formidable fupport which they are certain to receive from them as long as they continue to be the faithful Minifters of Juftice) has at laft created fuch an impartiality in the diftribution of public Juftice in England, has introduced into the Courts of Law the practice of fuch a thorough difregard of either the influence or wealth of the contending Parties, and procured to every individual, both fuch an eafy accefs to thefe Courts, and fuch a certainty of redrefs, as are not to be paralleled in any other Government. —Philip de Comines, fo long as three hundred years ago, commended in ftrong terms the exactnefs with which Juftice is done in England

to all ranks of Subjects (*a*); and the impartiality with which the same is administered in these days, will with still more reason create the surprise of every Stranger who has an opportunity of observing the customs of this Country (*b*).

(*a*) See page 36 of this Work.

(*b*) A little after I came to England for the first time (if the Reader will give me leave to make mention of myself in this case) an action was brought in a Court of Justice against a Prince very nearly related to the Crown: and a noble Lord was also, much about that time, engaged in a law-suit for the property of some valuable lead-mines in Yorkshire. I could not but observe, that in both these cases a decision was given against the two most powerful parties; though I wondered but little at this, because I had before heard much of the impartiality of the law proceedings in England, and was prepared to see instances of that kind. But what I was much surprised at, was that no body appeared to be in the least so, not even at the strictness with which the ordinary course of the law had, particularly in the former case, been adhered to,—and that those proceedings which I was disposed to consider as great instances of justice, to the production of which some circumstances peculiar to the times, at least some uncommon virtue of spirit on the part of the Judges, must have more or less co-operated, were looked upon by all those whom I heard speak about it, as being nothing more than the common and expected course of things. This circumstance became a strong inducement to me to enquire into the nature of a Government by which such effects were produced.

Indeed to ſuch a degree of impartiality has the adminiſtration of public Juſtice been brought in England, that it is ſaying nothing beyond the exact truth, to affirm that any violation of the laws, though perpetrated by Men of the moſt extenſive influence, nay, though committed by the ſpecial direction of the very firſt ſervants of the Crown, will be publicly and completely redreſſed. And the very loweſt of Subjects will obtain ſuch redreſs, if he has but ſpirit enough to ſtand forth, and appeal to the laws of his Country.—Moſt extraordinary circumſtances theſe! which thoſe who know the difficulty that there is in eſtabliſhing juſt laws among Mankind, and in providing afterwards for their due execution, only find credible becauſe they are matters of fact, and can begin to account for, only when they look up to the conſtitution of the Government itſelf; that is to ſay, when they conſider the circumſtances in which the Executive Power, or the Crown, is placed in relation to the two Bodies that concur with it to form the Legiſlature,—the circumſtances in which thoſe two Aſſemblies are placed in relation to the Crown, and to each other, and the ſituation in which all

the Three find themſelves with reſpect to the whole body of the People (*a*).

(*a*) The aſſertion above made with reſpect to the impartiality with which Juſtice is, in all caſes, adminiſtered in England, not being of a nature to be proved by alleging ſingle facts, I have entered into no particulars on that account. However, I have ſubjoined here two caſes which, I think, cannot but appear remarkable to the Reader.

The firſt is the caſe of the proſecution commenced in the year 1763, by ſome Journeymen Printers, againſt the King's Meſſengers, for apprehending and impriſoning them for a ſhort time, by virtue of a *General Warrant* from the Secretaries of State; and that which was afterwards carried on by another private individual, againſt one of the Secretaries themſelves.——In theſe actions all the ordinary forms of proceeding uſed in caſes of actions between private Subjects, were ſtrictly adhered to; and both the Secretary of State, and the Meſſengers, were, in the end, condemned. Yet, which it is proper the Reader ſhould obſerve, from all the circumſtances that accompanied this affair, it is difficult to propoſe a caſe in which Miniſters could, of themſelves, be under greater temptations to exert an undue influence to hinder the ordinary courſe of Juſtice. Nor were the Acts for which thoſe Miniſters were condemned, Acts of evident oppreſſion, which nobody could be found to juſtify. They had done nothing but follow a practice of which they found ſeveral precedents eſtabliſhed in their Offices; and their caſe, if I am well informed, was ſuch that moſt individuals, under ſimilar circumſtances, would have thought themſelves authoriſed to have acted as they had done.

The ſecond caſe I propoſe to relate, affords a ſingular inſtance of the confidence with which all Subjects in Eng-

In fine, a very remarkable circumſtance in the Engliſh Government (and which alone evinces ſomething peculiar and excellent in its Nature), is that ſpirit of extreme mildneſs with which Juſtice, in criminal caſes, is adminiſtered in England; a point with regard to which England differs from all other Countries in the World.

When we conſider the puniſhments in uſe

land claim what they think their juſt rights, and of the certainty with which the remedies of the law are in all caſes open to them. The fact I mean, is the Arreſt executed in the reign of Queen Anne, in the year 1708, on the perſon of the Ruſſian Ambaſſador, by taking him out of his Coach for the ſum of fifty pounds—And the conſequences that followed this fact are ſtill more remarkable. The Czar highly reſented the affront, and demanded that the Sheriff of Middleſex, and all others concerned in the Arreſt, ſhould be puniſhed with inſtant death. "But "the Queen," (to the amazement of that deſpotic Court, ſays Juſtice Blackſtone, from whom I borrow this fact) "the Queen directed the Secretary of State to inform "him that ſhe could inflict no puniſhment upon any, "the meaneſt of Her Subjects, unleſs warranted by the "law of the land."—An Act was afterwards paſſed to free from arreſts the perſons of foreign Miniſters, and ſuch of their ſervants as they have delivered a liſt of to the Secretary of State. A copy of this Act elegantly engroſſed and illuminated, continues Judge Blackſtone, was ſent to Moſcow, and an Ambaſſador extraordinary commiſſioned to deliver it.

in the other States in Europe, we wonder how Men can be brought to treat their fellow creatures with ſo much cruelty; and the bare conſideration of thoſe punishments would ſufficiently convince us (ſuppoſing we did not know the fact from other circumſtances) that the Men in thoſe States who frame the laws, and preſide over their execution, have little apprehenſion that either they, or their friends, will ever fall victims to thoſe laws which they thus raſhly eſtabliſh.

In the Roman Republic, circumſtances of the ſame nature with thoſe juſt mentioned, were alſo productive of the greateſt defects in the kind of criminal Juſtice which took place in it. That claſs of Citizens who were at the head of the Republic, and who knew how mutually to exempt each other from the operation of any too ſevere laws or practice, not only allowed themſelves great liberties, as we have ſeen, in diſpoſing of the lives of the inferior Citizens, but had alſo introduced into the exerciſe of the illegal powers they aſſumed to themſelves in that reſpect, a great degree of cruelty (*a*).

(*a*) The common manner in which the Senate ordered Citizens to be put to death, was by throwing them headlong from the top of the Tarpeian Rock. The

Nor were things more happily conducted in the Grecian Republics. From their Democratical nature, and the frequent Revolutions to which they were ſubject, we naturally expect to ſee that authority to have been uſed with mildneſs, which thoſe who enjoyed it muſt have known to have been but precarious; yet, ſuch were the effects of the violence attending thoſe very Revolutions, that a ſpirit both of great irregularity and cruelty had taken place among the Greeks, in the exerciſe of the power of inflicting puniſhments. The very harſh laws of *Draco* are well known, of which it was ſaid that they were not written with ink, but with blood. The ſevere laws of the Twelve Tables among the Romans, were in great part brought over from Greece. And it was an opinion commonly received in Rome, that the cruelties practiſed by the Magiſtrates on the Citizens, were only imitations of the examples which the Greeks had given them *(a)*.

Conſuls, or other particular Magiſtrates, ſometimes cauſed Citizens to expire upon a croſs; or, which was a much more common caſe, ordered them to be beaten to death, with their heads faſtened between the two branches of a fork: which they called *cervicem furcæ inſerere*.

(*a*) Cæſar expreſsly reproaches the Greeks with this fact in his ſpeech in favour of the accomplices of

In fine, the uſe of Torture, that method of adminiſtering Juſtice in which folly may be ſaid to be added to cruelty, had been adopted by the Greeks, in conſequence of the ſame cauſes which had concurred to produce the irregularity of their criminal Juſtice. And the ſame practice continues, in theſe days, to prevail on the continent of Europe, in conſequence of that general arrangement of things which creates there ſuch a careleſſneſs about remedying the abuſes of public Authority.

But the nature of that ſame Government which has procured to the People of England all the advantages we have before deſcribed, has, with ſtill more reaſon, freed them from the moſt oppreſſive abuſes, which prevail in other countries.

That wantonneſs in diſpoſing of the deareſt rights of Mankind, thoſe inſults upon human Nature, upon which the frame of the Governments eſtabliſhed in other States, unavoidably becomes more or leſs productive, are entirely baniſhed from a Nation which has the happineſs of having its intereſts taken care of

Catiline, which Salluſt has tranſmitted to us—*Sed eodem illo tempore Græciæ morem imitati* [Majores noſtri], *verberibus animadvertebant in civeis; de condemnatis ultimum ſupplicium ſumptum.*

by Men, who continue to be themſelves expoſed to the preſſure of thoſe laws which they concur in making, and of every tyrannic practice which they ſuffer to be introduced,—by Men whom the advantages which they poſſeſs above the reſt of the People, render only more expoſed to the abuſes they are appointed to prevent, only more alive to the dangers againſt which it is their duty to defend the Community (*a*).

Hence we ſee that the uſe of Torture has, from the earlieſt times, been utterly unknown in England. And all attempts to introduce it, whatever might be the power of thoſe who made them, or the circumſtances in which they renewed their endeavours, have been ſtrenuouſly oppoſed and defeated (*b*).

(*a*) Hiſtorians take notice that the Commons, in the reign of Charles II. made haſte to procure the abolition of the old Statute, *De Hæretico comburendo* (For burning Heretics), as ſoon as it became to be publicly known that the preſumptive Heir to the Crown was a Roman Catholic. Perhaps they would not have been ſo diligent and earneſt, if they had not been fully convinced that a Member of the Houſe of Commons, or his friends, may be brought to trial as eaſily as any other individuals among the people, ſo long as an expreſs and written law may be produced againſt them.

(*b*) The Reader may on this ſubject ſee again the Note in page 181 of this Work, where the oppoſition is mentioned, that was made to the Earl of Suffolk,

From the ſame cauſe alſo aroſe that remarkable forbearance of the Engliſh Laws, to uſe any cruel ſeverity in the puniſhments which experience ſhewed it was neceſſary for the preſervation of Society to eſtabliſh: and the utmoſt vengeance of thoſe laws, even againſt the moſt enormous Offenders, never extends beyond the ſimple deprivation of life (*a*).

Nay, ſo anxious has the Engliſh Legiſlature been to eſtabliſh mercy, even to convicted offenders, as a fundamental principle of the Government of England, that they made

and the Duke of Exeter, when they attempted to introduce the practice of Torture: this even was one of the cauſes for which the latter was afterwards impeached. —The Reader is alſo referred to the Note following that which has juſt been quoted, in which the ſolemn declaration is related, that was given by the Judges againſt the practice of Torture, in the caſe of Felton, who had aſſaſſinated the Duke of Buckingham.

(*a*) A very ſingular inſtance occurs in the Hiſtory of the year 1605, of the care of the Engliſh Legiſlature not to ſuffer precedents of cruel practices to be introduced. During the time that thoſe concerned in the gun-powder plot were under ſentence of death, a motion was made in the Houſe of Commons to petition the King that the execution might be ſtaid, in order to conſider of ſome extraordinary puniſhment to be inflicted upon them: but this motion was rejected. A propoſal of the ſame kind was alſo made in the Houſe of Lords, where it was dropped.—See the Parliamentary Hiſtory of England, vol. v. anno 1605.

it an exprefs article of that great public Compact which was framed at the important æra of the Revolution, that "no cruel and unufual "punifhments fhould be ufed (*a*)."—They even endeavoured, by adding a claufe for that purpofe to the Oath which Kings were thenceforward to take at their Coronation, as it were to render it an everlafting obligation of Englifh Kings, to make Juftice to be "executed with "mercy (*b*)."

(*a*) See the Bill of Rights, Art. x. — "Exceffive bail ought not to be required, nor exceffive fines impofed; nor cruel and unufual punifhments inflicted."

(*b*) Thofe fame difpofitions of the Englifh Legiflature, which have led them to take fuch precautions in favour even of convicted offenders, have ftill more engaged them to make provifions in favour of fuch perfons as are only fufpected and accufed of having committed offences of any kind. Hence the zeal with which they have availed themfelves of every important occafion, fuch for inftance as that of the Revolution, to procure new confirmations to be given to the inftitution of the Trial by Jury, to the laws on imprifonments, and in general to that fyftem of criminal Jurifprudence of which a defcription has been given in the firft part of this Work, to which I refer the Reader.

MAHARAJA SERFOGI'S
THE TAN... MAHAL.

CHAP. XVII.

A more inward View of the English Government than has hitherto been offered to the Reader in the course of this Work. — Very essential differences between the English Monarchy, as a Monarchy, and all those with which we are acquainted.

THE Doctrine constantly maintained in this Work, and which has, I think, been sufficiently supported by facts and comparisons drawn from the History of other Countries, is that the remarkable liberty enjoyed by the English Nation, is essentially owing to the impossibility under which their Leaders, or in general all Men of power among them, are placed, of invading and transferring to themselves any branch of the Governing Executive authority; which authority is exclusively vested, and firmly secured, in the Crown. Hence the anxious care with which those Men continue to watch the exercise of that authority. Hence their perseverance in observing every kind of engagement which themselves may have entered into with the rest of the People.

But here a consideration of a most important kind presents itself. — How comes the Crown in England thus constantly to preserve to itself (as we see it does) the Executive authority in the State, and moreover to preserve it so completely as to inspire the great Men in the Nation with that conduct so advantageous to public Liberty, which has just been mentioned? All these are effects which we do not find, upon examination, that the power of *Crowns* has hitherto been able to produce in other Countries.

In all States of a Monarchical form, we indeed see that those Men whom their rank and wealth, or their personal power of any kind, have raised above the rest of the People, have formed combinations among themselves to oppose the power of the Monarch. But their views, we must observe, in forming these combinations, were not by any means to set general and impartial limitations on the Sovereign authority. They endeavoured to render themselves entirely independent of that authority; or even utterly to annihilate it, according to circumstances.

Thus we see that in all the States of ancient Greece, the Kings were at last destroyed and exterminated. The same event happened in Italy, where in remote times there existed

for a while ſeveral kingdoms, as we learn both from the ancient Hiſtorians and the Poets. And in Rome, we even know the manner and circumſtances in which ſuch a revolution was brought about.

In more modern times, we ſee the numerous Monarchical Sovereignties which had been raiſed in Italy on the ruins of the Roman Empire, to have been ſucceſſively deſtroyed by powerful factions; and events of much the ſame nature have at different times taken place in the Kingdoms eſtabliſhed in the other parts of Europe.

In Sweden, Denmark, and Poland, for inſtance, we find that the *Nobles* have commonly reduced their Sovereigns to the condition of ſimple Preſidents over their Aſſemblies,—of mere oſtenſible Heads of the Government.

In Germany and in France, Countries where the Monarchs being poſſeſſed of conſiderable demeſnes, were better able to maintain their independence than the Princes juſt mentioned, the Nobles waged war againſt them, ſometimes ſingly and ſometimes jointly; and events ſimilar to theſe have ſucceſſively happened in Scotland, Spain, and the modern Kingdoms of Italy.

In fine, it has only been by means of ſtanding armed forces that the Sovereigns of moſt of the Kingdoms we have mentioned, have been

able in a courſe of time to aſſert the prerogatives of the Crown. And it is only by continuing to keep up ſuch forces, that, like the Eaſtern Monarchs, and indeed like all the Monarchs that ever exiſted, they continue to be able to ſupport their authority.

How therefore can the Crown of England, without the aſſiſtance of any armed force, maintain, as it does, its numerous prerogatives? How can it, under ſuch circumſtances, preſerve to itſelf the whole Executive power in the State? For here we muſt obſerve, the Crown in England does not derive any ſupport from what regular forces it has at its diſpoſal; and if we doubted this fact, we need only look to the aſtoniſhing ſubordination in which the military is kept to the civil power, to become convinced that an Engliſh King is not indebted to his army for the preſervation of his authority (*a*).

If we could ſuppoſe that the armies of the Kings of Spain or of France, for inſtance, were, through ſome very extraordinary circumſtance, all to vaniſh in one night, the power of thoſe Sovereigns, we muſt not doubt, would, ere ſix months, be reduced to a mere ſhadow.

(*a*) Henry VIII. the moſt abſolute Prince, perhaps, who ever ſat upon a Throne, kept no ſtanding army.

They would immediately behold their prerogatives, however formidable they may be at present, invaded and dismembered (*a*): and supposing that regular Governments continued to exist, they would be reduced to have little more influence in them than the Doges of Venice, or of Genoa, possess in the Governments of those Republics (*b*).

How, therefore, to repeat the question once more, which is one of the most interesting that can occur in politics, how can the Crown in England, without the assistance of any armed force, avoid those dangers to which all other Sovereigns are exposed?

How can it, without any such force, accomplish even incomparably greater works than those Sovereigns, with their powerful armies, are, we find, in a condition to perform?—How can it bear that universal effort (unknown in other Monarchies) which, we have seen, is continually and openly exerted against it? How can it even continue to resist it so powerfully as to preclude all individuals whatever, from ever entertaining any views besides those of setting just and ge-

(*a*) As was the case in the several Kingdoms into which the Spanish Monarchy was formerly divided; and, in no very remote times, in France itself.

(*b*) Or than the Kings of Sweden were allowed to enjoy, before the last Revolution in that Country.

neral limitations to the exercife of its authority? How can it enforce the laws upon all Subjects, indifcriminately, without injury or danger to itfelf? How can it, in fine, imprefs the minds of all the great Men in the State with fo lafting a jealoufy of its power, as to neceffitate them, even in the exercife of their undoubted rights and privileges, to continue to court and deferve the affection of the reft of the People?

Thofe great Men, I fhall anfwer, who even in quiet times prove fo formidable to other Monarchs, are in England divided into two Affemblies; and fuch, it is neceffary to add, are the principles upon which this divifion is made, that from it refults, as a neceffary confequence, the folidity and indivifibility of the power of the Crown (*a*).

The Reader may perceive that I have led him, in the courfe of this Work, much beyond the line within which Writers on the fubject of Government have confined themfelves, or rather, that I have followed a tract entirely different from that which thofe Writers have purfued. But as the obfervation juft made on the ftability of the power of the Crown

(*a*) I have not flattered myfelf, in writing this Chapter, that it would be perfectly underftood, nor is it defigned for the generality of readers.

in England, and the cauſe of it, is new in its kind, ſo do the principles from which its truth is to be demonſtrated, totally differ from what is commonly looked upon as the foundation of the ſcience of Politics. To lay theſe principles here before the Reader, in a manner completely ſatisfactory to him, would lead us into philoſophical diſcuſſions on what really conſtitutes the baſis of Governments and Power amongſt Mankind, both extremely long, and in a great meaſure foreign to the ſubject of this book. I ſhall therefore content myſelf with proving the above obſervations by facts; which is more, after all, than political Writers uſually undertake to do with regard to their ſpeculations.

As I chiefly propoſed to ſhew how the extenſive liberty the Engliſh enjoy, is the reſult of the peculiar frame of their Government, and occaſionally to compare the ſame with the Republican form, I even had at firſt intended to confine myſelf to that circumſtance, which both conſtitutes the eſſential difference between thoſe two forms of Government, and is the immediate cauſe of Engliſh liberty; I mean the having placed all the executive authority in the State out of the hands of thoſe in whom the People truſt. With regard to the remote

caufe of that fame liberty, that is to fay the ftability of the power of the Crown, this fingular folidity without the affiftance of any armed force, by which this executive authority is fo fecured, I fhould perhaps have been filent, had I not found it abfolutely neceffary to mention the fact in this place, in order to obviate the objections which the more reflecting part of Readers might otherwife have made, both to feveral of the obfervations before offered to them, and to a few others which are foon to follow.

Befides, I fhall confefs here, I have been feveral times under apprehenfions, in the courfe of this Work, left the generality of Readers, mifled by the fimilarity of names, fhould put too extenfive a conftruction upon what I faid with regard to the ufefulnefs of the power of the Crown in England;—left they fhould think, for inftance, that I attributed the fuperior advantages of the Englifh mode of Government over the Republican form, merely to its approaching nearer to the nature of the Monarchies eftablifhed in the other parts of Europe, and that I looked upon every kind of Monarchy, as being in itfelf preferable to a Republican Government: an opinion, which I do not by any means or in any degree entertain; I have too much affection, or if

you pleaſe, prepoſſeſſion, in favour of that form of Government under which I was born; and as I am ſenſible of its defects, ſo do I know how to ſet a value upon the advantages by which it compenſates for them.

I therefore have, as it were, made haſte to avail myſelf of the firſt opportunity of explaining my meaning on this ſubject,—of indicating that the power of the Crown in England ſtands upon foundations entirely different from thoſe on which the ſame Power reſts in other Countries,—and of engaging the Reader to obſerve (which for the preſent will ſuffice) that as the Engliſh Monarchy differs, in its nature and main foundations, from every other, ſo all that is ſaid here of its advantages is peculiar and confined to it.

But to come to the proofs (derived from facts) of the ſolidity accruing to the power of the Crown in England from the *co-exiſtence* of the two Aſſemblies, which concur to form the Engliſh Parliament, I ſhall firſt point out to the Reader ſeveral open acts of theſe two Houſes, by which they have by turns effectually defeated the attacks of each other upon its prerogative.

Without looking farther back for examples than the reign of Charles the Second, we ſee that the Houſe of Commons had, in that

reign, begun to adopt the method of adding (or tacking, as it is commonly expreſſed) ſuch bills as they wanted more particularly to have paſſed, to their money bills. This forcible uſe they made of their undoubted privilege of granting money, if ſuffered to have grown into common practice, would have totally deſtroyed the æquilibrium that ought to ſubſiſt between them and the Crown. But the Lords took upon themſelves the taſk of maintaining that æquilibrium: they complained with great warmth of the ſeveral precedents that were made by the Commons, of the practice we mention: they inſiſted that bills ſhould be framed "*in the old and decent way of Parlia-* "*ment*;" and at laſt have made it a ſtanding order of their Houſe, to reject, upon the ſight of them, all bills that are tacked to money bills.

Again, about the thirty-firſt year of the ſame reign, a ſtrong party prevailed in the Houſe of Commons; and their efforts were not entirely confined, if we may credit the Hiſtorians of thoſe times, to ſerving their Conſtituents faithfully, and providing for the welfare of the State. Among other bills which they propoſed in their Houſe, they carried one to exclude from the Crown the immediate Heir to it; an affair this, of a very high

nature, and with regard to which it may well be queſtioned whether the legiſlative Aſſemblies have a right to form a reſolution, without the expreſs and declared concurrence of the body of the People. But both the Crown and the Nation were delivered from the danger of eſtabliſhing ſuch a precedent, by the interpoſition of the Lords, who threw out the bill on the firſt reading.

In the reign of King William the Third, a few years after the Revolution, attacks were made upon the Crown from another quarter. A ſtrong party was formed in the Houſe of Lords; and, as we may ſee in Biſhop Burnet's Hiſtory of his Own Times, they entertained very deep deſigns. One of their views, among others, was to abridge the prerogative of the Crown of calling Parliaments, and judging of the proper times of doing it (*a*).

(*a*) They, beſides, propoſed to have all money bills ſtopped in their Houſe, till they had procured the right of taxing, themſelves, their own eſtates; and to have a Committee of Lords, and a certain number of the Commons, appointed to confer together concerning the State of the Nation; 'which Committee (ſays Biſhop Burnet) would ſoon have 'grown to have been a Council of State, that would have 'brought all affairs under their inſpection, and never had been 'propoſed but when the Nation was ready to break into civil 'wars.'—See Burnet's Hiſtory, anno 1693.

They accordingly framed and carried in their House a bill for ascertaining the sitting of Parliament every year: but the bill, after it had passed in their House, was rejected by the Commons (*a*).

Again, we find, a little after the accession of King George the First, an attempt was also made by a party in the House of Lords, to wrest from the Crown a prerogative which is one of its finest flowers; and is, besides, the only check it has on the dangerous views which that House (which may stop both money bills and all other bills) might be brought to entertain; I mean the right of adding new members to it; and judging of the times when it may be necessary to do so. A bill was accordingly presented and carried, in the House of Lords, for limiting the members of that House to a fixed number, beyond which it should not be increased; but after great pains taken to insure the success of this bill, it was at last rejected by the House of Commons.

In fine, the several attempts which a majority in the House of Commons have in their turn made to restrain, farther than it now is, the influence of the Crown arising from the distribution of preferments and other advan-

(*a*) Nov. 28, 1693.

tages, have been checked by the Houſe of Lords; and all place-bills have, from the beginning of this Century, conſtantly miſcarried in that Houſe.

Nor have theſe two powerful Aſſemblies only ſucceeded in thus warding off the open attacks of each other, on the power of the Crown. Their co-exiſtence, and the principles upon which they are ſeverally framed, have been productive of another effect much more extenſive, though at firſt leſs attended to, I mean the preventing even the making of ſuch attacks; and in times too, when the Crown was of itſelf incapable of defending its authority: the views of each of theſe two Houſes deſtroying, upon theſe occaſions, the oppoſite views of the other, like thoſe poſitive and negative equal quantities (if I may be allowed the compariſon) which deſtroy each other on the oppoſite ſides of an equation.

Of this we have ſeveral remarkable examples: as for inſtance, when the Sovereign has been a minor. If we examine the Hiſtory of other Nations, eſpecially before the invention of ſtanding armies, we ſhall find that the event we mention never failed to be attended with open invaſions of the Royal authority, or even ſometimes with complete and ſettled diviſions of it. In England, on the contrary, whe-

ther we look at the reign of Richard II. or that of Henry VI. or of Edward VI. we ſhall ſee that the Royal authority has been quietly exercifed by the Councils that were appointed to aſſiſt thoſe Princes; and when they came of age, the ſame has been delivered over to them undiminiſhed.

But nothing ſo remarkable can be alleged on this ſubject, as the manner in which theſe two Houſes have acted upon thoſe occaſions when the Crown being without any preſent poſſeſſor, they had it in their power, both to ſettle it on what perſon they pleaſed, and to divide and diſtribute its effectual prerogatives, in what manner, and to what ſet of Men, they might think proper. Circumſtances like thoſe we mention, have never failed, in other Kingdoms, to bring on a diviſion of the effectual authority of the Crown, or even of the State itſelf. In Sweden, for inſtance (to ſpeak of that kingdom which has borne the greateſt outward reſemblance to that of England), when Queen Chriſtina was put under a neceſſity of abdicating the Crown, and it was transferred to the Prince who ſtood next to her in the line of Succeſſion, the Executive authority in the State was immediately divided, and either diſtributed among the Nobles, or aſſigned to the

Senate, into which the Nobles alone could be admitted; and the new King was only to be a Prefident over it.

After the death of Charles the Twelfth, who died without male heirs, the difpofal of the Crown (the power of which Charles the Eleventh had found means to render again abfolute) returned to the States, and was fettled on the Princefs Ulrica, and the Prince her hufband. But the Senate, at the fame time it thus fettled the poffeffion of the Crown, again affumed to itfelf the effectual authority which had formerly belonged to it. The privilege of affembling the States was vefted in that body. They alfo fecured to themfelves the power of making war and peace, and treaties with foreign powers,—the difpofal of places,—the command of the army and of the fleet,—and the adminiftration of the public revenue. Their number was to confift of fixteen Members. The majority of votes was to be decifive upon every occafion. The only privilege of the new King was, to have his vote reckoned for two: and if at any time he fhould refufe to attend their meetings, the bufinefs was neverthelefs to be done as effectually and definitively without him (*a*).

(*a*) The Senate had procured a Seal to be made, to be affixed to their official refolutions, in cafe the King fhould refufe to lend his own. The reader will find a few more

But in England, the Revolution of the year 1689 was terminated in a manner totally dif-

particulars concerning the former government of Sweden, in the nineteenth Chapter.

Regulations of a ſimilar nature had been made in Denmark, and continued to ſubſiſt, with ſome variations, till the Revolution which, in the laſt Century, placed the whole power in the State in the hands of the Crown, without controul. The different Kingdoms into which Spain was formerly divided, were governed in much the ſame manner.

And in Scotland, that Seat of anarchy and ariſtocratical feuds, all the great offices in the State were not only taken from the Crown; but they were moreover made hereditary in the principal families of the Body of the Nobles:—ſuch were the offices of High Admiral, High Steward, High Conſtable, Great Chamberlain, and Juſtice General; this latter office implied powers analogous to thoſe of the Lord Chancellor, and the Lord Chief Juſtice of the King's Bench, united.

The King's minority, or perſonal weakneſs, or in general the difficulties in which the State might be involved, were circumſtances in which the Scotch Leaders never failed to avail themſelves for invading the governing authority: a remarkable inſtance of the claims they were uſed to ſet forth on thoſe occaſions, occurs in a Bill that was framed in the year 1703, for ſettling the Succeſſion to the Crown, after the demiſe of the Queen, under the title of *An Act for the Security of the Kingdom.*

The Scotch Parliament was to ſit by its own authority, every year, on the firſt day of November, and adjourn themſelves as they ſhould think proper.

The King was to give his aſſent to all laws agreed to, and offered by, the Eſtates; or commiſſion proper officers for doing the ſame.

ferent. Thoſe who at that intereſting epoch had the guardianſhip of the Crown,—thoſe in whoſe hands it lay *vacant*, did not manifeſt ſo much as a thought to ſplit and parcel out its prerogative. They tendered it to a ſingle indiviſible poſſeſſor, impelled as it were by ſome ſecret power that was, unſeen, operating upon them without any ſalvo, without any article to eſtabliſh the greatneſs of themſelves, or of their families. It is true thoſe prerogatives deſtructive of public liberty which the late King had aſſumed, were retrenched from the Crown; and thus far the two Houſes agreed. But as to any attempt to transfer to other hands any part of the authority of the Crown, no propoſal was even made about it. Thoſe branches of prerogative which were taken from the kingly office, were annihilated and made to ceaſe to exiſt in the ſtate ; and all the Executive authority that was thought neceſſary to be continued in the Government, was, as before, left undivided in the Crown.

A Committee of one and thirty Members, choſen by the Parliament, were to be called the King's Council, and govern during the receſs, being accountable to the Parliament.

The King not to make any foreign treaty without the conſent of Parliament.

All places and offices, both civil and military, and all penſions formerly given by the King, ſhall ever after be given by Parliament. See *Parliamentary Debates*, A. 1703.

In the very ſame manner was the whole authority of the Crown transferred afterwards to the Princeſs who ſucceeded King William the Third, and who had no other claim to it but what was conferred on her by the Parliament. And in the ſame manner again was it ſettled, a long time beforehand, on the Princes of Hanover who have ſince ſucceeded her (*a*).

Nay, one more extraordinary fact, and to which I deſire the Reader to give attention—

(*a*) It may not be improper to obſerve here, as a farther proof of the indiviſibility of the power of the Crown (which has been above ſaid to reſult from the peculiar frame of the Engliſh Government), that no part of the Executive authority of the King is veſted in his Privy Council, as we have ſeen it was in the Senate of Sweden: the whole buſineſs centres in the Sovereign; the votes of the Members are not even counted, if I am well informed: and in fact the conſtant ſtyle of the Law is, the King *in* Council, and not the King *and* Council. A proviſo is indeed ſometimes added to ſome Bills, that certain acts mentioned in them are to be tranſacted by the King in Council: but this is only a precaution taken in the view that the moſt important affairs of a great Nation may be tranſacted with proper ſolemnity, and to prevent, for inſtance, all objections that might, in proceſs of time, be drawn from the uncertainty whether the King has aſſented, or not, to certain particular tranſactions. The King names the Members of the Privy Council; or excludes them, by cauſing their names to be ſtruck out of the Book.

Notwithſtanding all the Revolutions we mention, and although Parliament hath ſat every year ſince the beginning of this century, and though they have conſtantly enjoyed the moſt unlimited freedom both as to the ſubjects and the manner of their deliberations, and numberleſs propoſals have in conſequence been made,—yet, ſuch has been the efficiency of each Houſe, in deſtroying, preventing, or qualifying, the views of the other, that the Crown has not been obliged during all that time to make uſe, even once, of its negative voice; and the laſt Bill rejected by a king of England, has been that rejected by King William the Third, in the year 1692, for Triennial Parliaments (*a*).

There is another inſtance yet more remarkable of this forbearing conduct of the Parliament in regard to the Crown, to whatever open or latent cauſe it may be owing, and how little their *eſprit de corps* in reality leads them, amidſt the apparent heat ſometimes of their ſtruggles, to invade its governing executive authority; I mean, the facility with which they have been prevailed upon to give up any eſſential branch of that authority, even after a

(*a*) He aſſented a few years afterwards to that Bill, after ſeveral amendments had been made in it.

conjunction of preceding circumstances had caused them to be actually in possession of it; a case this, however, that has not frequently happened in the English History. After the Restoration of Charles the Second, for instance, we find the Parliament to have of their own accord passed an Act, in the first year that followed that event, by which they annihilated, at one stroke, both the independent legislative authority, and all claims to such authority, which they had assumed during the preceding disturbances:—by the Stat. 13 Car. II. c. 1. it was forbidden, under the penalty of a *premunire*, (see p. 97.) to affirm that either of the two Houses of Parliament, or both jointly, possess, without the concurrence of the King, the Legislative authority. In the fourth year after the Restoration, another capital branch of the governing authority of the Crown was also restored to it, without any manner of struggle:—by the Stat. 16 Car. II. c. 1. the Act was repealed by which it had been enacted, that in case the King should neglect to call a Parliament once at least in three years, the Peers should issue the writs for an election; and that should they neglect to issue the same, the Constituents should of themselves assemble to elect a Parliament.

It is here to be obſerved, that, in the ſame reign we mention, the Parliament paſſed the *Habeas Corpus* Act, as well as the other Acts that prepared the ſame, and in general ſhewed a jealouſy in watching over the liberty of the ſubject, ſuperior perhaps to what has taken place at any other period of the Engliſh Hiſtory: this is another ſtriking confirmation of what has been remarked in a preceding Chapter, concerning the manner in which public diſturbances have always been terminated in England. Here we find a ſeries of Parliaments, to have been tenaciouſly and perſeverantly jealous of thoſe kinds of popular univerſal proviſions which great Men in other States ever diſdained ſeriouſly to think of, or give a place to, in thoſe treaties by which internal peace was reſtored to the Nation; and at the ſame time theſe Parliaments cordially and ſincerely gave up thoſe high and ſplendid branches of Governing authority, which the Senates or Aſſemblies of great Men who ſurrounded the Monarchs in other limited Monarchies, never ceaſed anxiouſly to ſtrive to aſſume to themſelves,—and which the Monarchs, after having loſt them, never were able to recover but by military violence aided by ſurpriſe, or through National com-

motions. All theſe are political ſingularities, certainly remarkable enough. It is a circumſtance in no ſmall degree conducive to the ſolidity of the executive authority of the Engliſh Crown (which is the ſubject of this Chapter), that thoſe perſons who ſeem to have it in their power to wreſt the ſame from it, are, ſomehow, prevented from entertaining thoughts of doing ſo (*a*).

(*a*) I will mention another inſtance of this real diſintereſtedneſs of the Parliament in regard to the power of the Crown,—nay, of the ſtrong bent that prevails in that Aſſembly, to make the Crown the general depoſitory of the executive authority to the Nation; I mean to ſpeak of the manner in which they uſe to provide for the execution of thoſe reſolutions of an active kind they may at times come to: it is always by addreſſing the Crown for that purpoſe, and deſiring it to interfere with its own executive authority. Even in regard to the printing of their Journals, the Crown is applied to by the Commons, with a promiſe of making good to it the neceſſary expences. Certainly, if there exiſted in that Body any latent anxiety, any real ambition (I ſpeak here of the general tenor of their conduct) to inveſt themſelves with the executive authority in the State, they would not give up the providing by their own authority at leaſt for the object juſt mentioned: it might give them a pretence for having a ſet of Officers belonging to them, as well as a Treaſury of their own, and, in ſhort, for eſtabliſhing in their favour ſome ſort of beginning or precedent: at the ſame time that a wiſh on their part, to be the publiſhers of their own Journals, could not be

As another proof of the peculiar ſolidity of the power of the Crown, in England, may be mentioned the facility, and ſafety to itſelf, and to the State, with which it has at all times been able to deprive any particular Subjects of their different offices, however overgrown, and even dangerous, their private power may ſeem to be. A very remarkable inſtance of this kind occurred when the great Duke of Marlborough was ſuddenly removed from all his employments: the following is the account given by Dean Swift, in his "Hiſtory of the Four laſt "Years of the Reign of Queen Anne."

decently oppoſed by the Crown, nor would be likely to be found fault with by the public. To ſome readers the fact we are ſpeaking of may appear trifling: to me it is not ſo: I confeſs I never happen to ſee a paragraph in the newſpapers, mentioning an addreſs to the Crown for borrowing its executive prerogative in regard to the inconſiderable object here alluded to, without pauſing for half a minute on the article. Certainly there muſt needs exiſt cauſes of a very peculiar nature which produce in an Aſſembly poſſeſſed of ſo much weight, that remarkable freedom from any ſerious ambition to puſh their advantages farther,—which inſpire it with the great political forbearance we have mentioned, with ſo ſincere an indifference in general, in regard to arrogating to themſelves any branch of the executive authority of the Crown:—they really ſeem as if they did not know what to do with it after having acquired it, nor of what kind of ſervice it may be to them.

“ So that the Queen found herſelf under a
“ neceſſity, by removing one perſon from ſo
“ great a truſt, to get clear of all her difficulties
“ at once: her Majeſty determined upon the
“ latter expedient, as the ſhorter and ſafer
“ courſe; and during the receſs at Chriſtmas,
“ ſent the Duke a letter to tell him ſhe had no
“ farther occaſion for his ſervice.

“ There has not perhaps in the preſent age
“ been a clearer inſtance to ſhew the inſtability
“ of power, which is not founded on virtue:
“ and it may be an inſtruction to Princes who
“ are well in the hearts of their People, that
“ the overgrown power of any particular
“ perſon, although ſupported by exorbitant
“ duced in a moment, without any dangerous
“ wealth, can, by a little reſolution, be re-
“ conſequences. This Lord, who was, beyond
“ all compariſon, the greateſt ſubject in Chriſ-
“ tendom, found his power, credit, and influ-
“ ence crumble away on a ſudden; and except
“ a few friends and followers, the reſt dropped
“ off in courſe, &c.” (B. I. near the end.)

The eaſe with which ſuch a Man as the Duke was ſuddenly removed, Dean Swift has explained by the neceſſary advantages of Princes who poſſeſs the affection of their People, and the natural weakneſs of power which is not

founded on virtue. However, theſe are very unſatisfactory explanations. The Hiſtory of Europe, in former times, offers us a continued ſeries of examples to the contrary. We ſee in it numberleſs inſtances of Princes inceſſantly engaged in reſiſting in the field the competition of Subjects inveſted with the eminent dignities of the Realm, who were not by any means ſuperior to them in point of virtue,—or at other times, living in a continued ſtate of vaſſalage under ſome powerful Man whom they durſt not reſiſt, and whoſe *power, credit, and influence* they would have found it far from poſſible to *reduce in a moment, or crumble on a ſudden*, by the ſending of a ſingle letter, even though aſſiſted *by a little reſolution*, to uſe Dean Swift's expreſſions, and without any dangerous conſequences.

Nay, certain Kings, ſuch as Henry the Third of France, in regard to the Duke of Guiſe, and James the Second of Scotland, in regard to the two Earls of Douglas ſucceſſively, had at laſt recourſe to plot and aſſaſſination; and expedients of a ſimilar ſudden violent kind, are the ſettled methods adopted by the Eaſtern monarchs; nor is it very ſure they can always eaſily do otherwiſe (*a*).

(*a*) We might alſo mention here the caſe of the Emperor Ferdinand II. and the Duke of Walſtein, which

Even in the preſent Monarchies of Europe, notwithſtanding the awful force by which they are outwardly ſupported, a diſcarded Miniſter is the cauſe of more or leſs anxiety to the governing Authority; eſpecially if, through the length of time he has been in office, he happens to have acquired a conſiderable degree of influence. He is generally ſent and confined to one of his eſtates in the country, which the Crown names to him: he is not allowed to appear at Court, nor even in the Metropolis; much leſs is he ſuffered to appeal to the People in loud complaints, to make public ſpeeches to the great Men in the State, and intrigue among them, and in ſhort to vent his reſentment by thoſe bitter, and ſometimes deſperate methods, which, in the Conſtitution of this Country, prove in a great meaſure harmleſs.

ſeems to have at the time made a great noiſe in the world. —The Earls of Douglas were ſometimes attended by a retinue of two thouſand horſe. See Dr. Robertſon's Hiſtory of Scotland.—The Duke of Guiſe was warned, ſome hours before his death, of the danger of truſting his perſon into the King's preſence or houſe; he anſwered, *On n'oſeroit*—They durſt not.

If Mary, Queen of Scots, had poſſeſſed a power analogous to that exerted by Queen Anne, ſhe might perhaps have avoided being driven into thoſe inſtances of ill-conduct which were followed by ſuch tragical conſequences.

But a Diſſolution of the Parliament, that is, the diſmiſſion of the whole body of the great Men in the Nation, aſſembled in Legiſlative capacity, is a circumſtance in the Engliſh Government, in a much higher degree remarkable and deſerving our notice, than the depriving any ſingle individual, however powerful, of his public employments. When we conſider in what an eaſy and complete manner ſuch a diſſolution is effected in England, we muſt needs become convinced, that the power of the Crown bears upon foundations of very uncommon, though perhaps hidden, ſtrength; eſpecially, if we attend to the ſeveral facts that take place in other Countries.

In France, for example, we find the Crown, notwithſtanding the immenſe outward force by which it is ſurrounded, to uſe the utmoſt caution in its proceedings towards the Parliament of Paris: an Aſſembly only of a judiciary nature, without any Legiſlative authority or avowed claim, and which, in ſhort, is very far from having the ſame weight in the kingdom of France, as the Engliſh Parliament has in England. The King never repairs to that Aſſembly, to ſignify his intentions, or hold a *Lit de Juſtice*, without the moſt over-awing circumſtances of military apparatus and preparation,

conftantly choofing to make his appearance among them rather as a military General, than as a King.

And when the late King, having taken a ferious alarm at the proceedings of this Parliament, at length refolved upon their difmiffion, he fenced himfelf, as it were, with his army; and military Meffengers were fent with every circumftance of fecrecy and difpatch, who, at an early part of the day, and at the fame hour, furprifed each Member in his own houfe, caufing them feverally to depart for diftant parts of the country which were prefcribed to them, without allowing them time to confider, much lefs to meet, and hold any confultation together.

But the Perfon who is invefted with the kingly office, in England, has need of no other weapon, no other artillery, than the Civil *Infignia* of his dignity, to effect a diffolution of the Parliament. He fteps into the middle of them, telling them they are diffolved; and they are diffolved:—he tells them, they are no longer a Parliament; and they are no longer fo. Like Popilius's wand (*a*), a diffolution inftantly puts a ftop to their warmeft debates and moft vio-

(*a*) He who ftopped the army of King Antiochus.

lent proceedings. The wonderful words by which it is expreſſed have no ſooner met their ears, than all their legiſlative faculties are benumbed: though they may ſtill be ſitting on the ſame benches, they look no longer upon themſelves as forming an Aſſembly; they no longer conſider each other in the light of Aſſociates or of Colleagues. As if ſome ſtrange kind of weapon, or a ſudden magical effort, had been exerted in the midſt of them, all the bonds of their union are cut off: and they haſten away, without having ſo much as the thought of continuing for a ſingle minute the duration of their Aſſembly (*a*).

(*a*) Nor has London poſt-horſes enough to drive them far and near into the Country, in caſe the declaration by which the Parliament is diſſolved, alſo mentions the calling of a new one.

A Diſſolution, when proclaimed by a common Crier aſſiſted by a few Beadles, is attended by the very ſame effects.

To the account of the expedient uſed by the late King of France, to effect the diſmiſſion of the Parliament of Paris, we may add the manner in which the Crown of Spain, in a higher degree arbitrary perhaps than that of France, undertook, ſome years ago, to rid itſelf of the religious Society of the Jeſuits, whoſe political influence and intrigues had grown to give it umbrage. They were ſeized by an armed force, at the ſame minute of the ſame day, in every Town or Borough of that extenſive

To all theſe obſervations concerning the peculiar ſolidity of the authority of the Crown, in England, I ſhall add another that is ſupplied by the whole ſeries of the Engliſh Hiſtory; which is, that though bloody broils and diſturbances have often taken place in England, and war often made againſt the King, yet it has ſcarcely ever been done, but by perſons who poſitively and expreſsly laid claim to the Crown. Even while Cromwell contended with an armed force againſt Charles the Firſt, it was, as every one knows who has read that part of the Engliſh hiſtory, in the King's own name he waged war againſt him.

Monarchy where they had reſidence, in order to their being hurried away to ſhips that were waiting to carry them into another Country: the whole buſineſs being conducted with circumſtances of ſecrecy, ſurpriſe, and of preparation far ſuperior to what is related of the moſt celebrated conſpiracies mentioned in Hiſtory.

The Diſſolution of the Parliament which Charles the Second had called at Oxford, is an extremely curious event: a very lively account of it is to be found in Oldmixon's Hiſtory of England.

If certain alterations, however imperceptible they may perhaps be, at firſt, to the public eye, ever take place, the period may come at which the Crown will no longer have it in its power to diſſolve the Parliament; that is to ſay, a diſſolution will no longer be followed by the ſame effects that it is at preſent.

The ſame objection might be expreſſed in a more general manner, and with ſtrict truth, by ſaying, that no war has been waged, in England, againſt the governing authority, except upon national grounds; that is to ſay, either when the title to the Crown has been doubtful, or when general complaints, either of a political or religious kind, have ariſen from every part of the Nation: as inſtances of ſuch complaints may be mentioned thoſe that gave riſe to the war againſt King John, which ended in the paſſing of the Great Charter,—the civil wars in the reign of Charles the Firſt,—and the Revolution of the year 1689. From the facts juſt mentioned it may alſo be obſerved as a concluſion, that the Crown cannot depend on the great ſecurity we have been deſcribing any longer than it continues to fulfil its engagements to the Nation, and to reſpect thoſe laws which form the compact between it and the People. And the imminent dangers, or at leaſt the alarms and perplexities, in which the Kings of England have conſtantly involved themſelves, whenever they have attempted to ſtruggle againſt the general ſenſe of the Nation, manifeſtly ſhew that all that has been above obſerved, concerning the ſecurity and remarkable ſtability ſomehow annexed to their Office, is to

be underſtood, not of the capricious power of the Man, but of the lawful authority of the Head of the State (*a*).

(*a*) One more obſervation might be made on the ſubject; which is, that when the kingly dignity has happened in England to be wreſted from the poſſeſſor, through ſome revolution, it has been recovered, or ſtruggled for, with more difficulty than in other Countries: in all the other Countries upon earth, a King *de jure* (by claim) poſſeſſes advantages in regard to the King in being, much ſuperior to thoſe of which the ſame circumſtances may be productive in England. The power of the other Sovereigns in the World, is not ſo ſecurely eſtabliſhed as that of an Engliſh King: but then their character is more indelible; that is to ſay,—till their Antagoniſts have ſucceeded in cutting them off and their families, they poſſeſs in a high degree a power to renew theſe claims, and diſturb the State. Thoſe family pleas or claims of priority, and in general thoſe arguments to which the bulk of Mankind have agreed to allow ſo much weight, ceaſe almoſt entirely to be of any effect, in England, againſt the perſon actually inveſted with the kingly office, as ſoon as the conſtitutional parts and ſprings have begun to move, and in ſhort as ſoon as the machine of the Government has once begun to be in full play. An univerſal national ferment, ſimilar to that which produced the former diſturbances, is the only time of real danger.

The remarkable degree of internal national quiet, which, for very near a century paſt, has followed the Revolution of the year 1689, is a remarkable proof of the truth of the obſervations above made; nor do I think, that, all circumſtances being conſidered, any other Country can produce the like inſtance.

Second Part of the ſame Chapter.

THERE is certainly a very great degree of ſingularity in all the circumſtances we have been deſcribing here: thoſe perſons who are acquainted with the Hiſtory of other Countries, cannot but remark with ſurpriſe, that ſtability of the power of the Engliſh Crown,—that myſterious ſolidity,—that inward binding ſtrength with which it is able to carry on with certainty its legal operations, amidſt the clamorous ſtruggle and uproar with which it is commonly ſurrounded, and without the medium of any armed threatening force. To give a demonſtration of the manner in which all theſe things are brought to bear and operate, is not, as I ſaid before, my deſign to attempt here; the principles from which ſuch demonſtration is to be derived, ſuppoſe an inquiry into the nature of Man, and of human affairs, which rather belongs to Philoſophy (though a branch hitherto unexplored) than to Politics: at leaſt ſuch an inquiry certainly lies out of the ſphere of the common Science of Politics (*a*). However, I had a very material

(*a*) It may, if the reader pleaſes, belong to the Science of *Metapolitics*; in the ſame ſenſe as we ſay *Metaphyſics*; that is, the Science of thoſe things which lie beyond phyſical, or ſubſtantial, things. A few more words are beſtowed

reaſon in introducing all the above-mentioned facts concerning the peculiar ſtability of the governing authority of England, in that they lead to an obſervation of a moſt important political nature; which is, that this ſtability allows ſeveral eſſential branches of Engliſh liberty to take place which without it could not exiſt. For there is a very eſſential conſideration to be made in every Science, though ſpeculators are ſometimes apt to loſe ſight of it, which is, that in order that things may have exiſtence, they muſt be *poſſible*; in order that political regulations of any kind may obtain their effect, they muſt imply no direct contradiction, either open or hidden, to the nature of things, or to the other circumſtances of the Government. In reaſoning from this principle, we ſhall find that the ſtability of the Governing executive authority in England, and the weight it gives to the whole machine of the State, have actually enabled the Engliſh Nation, conſidered as a free Nation, to enjoy ſeveral advantages which would really have been totally unattainable in the other States we have mentioned in former Chapters, whatever degree of public virtue we might even ſuppoſe to have belonged to thoſe who acted

upon the ſame ſubject, in the Advertiſement, or Preface, at the head of this Work.

in thoſe States as the adviſers of the People, or in general who were truſted with the buſineſs of framing laws (*a*).

One of theſe advantages reſulting from the Solidity of the Government, is, the extraordinary perſonal freedom which all ranks of individuals in England enjoy at the expence of the governing authority. In the Roman Commonwealth, for inſtance, we ſee the Senate to have been veſted with a number of powers totally deſtructive of the liberty of the Citizens: and the continuance of theſe powers was, no doubt, in a great meaſure owing to the treacherous remiſſneſs of thoſe Men in whom the People truſted for repreſſing them, or even to their determined reſolution not to abridge thoſe prerogatives. Yet, if we attentively conſider the conſtant ſituation of affairs in that Republic, we ſhall find that though we might ſuppoſe thoſe perſons to have been ever ſo truly attached to the cauſe of the People, it would not really have been poſſible for them to procure to the People an entire ſecurity. The right enjoyed by the Senate, of ſuddenly naming a Dictator with a power unreſtrained

(*a*) I ſhould be very well ſatisfied though only the more reflecting claſs of readers were fully to underſtand the tendency of this Chapter: in the mean time it is conſiderably illuſtrated beyond what it was in the former Editions.

by any law, or of investing the Consuls with an authority of much the same kind, and the power it at times assumed of making formidable examples of arbitrary Justice, were resources of which the Republic could not, perhaps, with safety have been totally deprived: and though these expedients frequently were used to destroy the just liberty of the People, yet they were also very often the means of preserving the Commonwealth.

Upon the same principle we should possibly find that the *Ostracism*, that arbitrary method of banishing Citizens, was a necessary resource in the Republic of Athens. A Venetian Noble would perhaps also confess, that however terrible the State Inquisition established in his Republic may be even to the Nobles themselves, yet it would not be prudent entirely to abolish it. And we do not know but a Minister of State in France, though we might suppose him ever so virtuous and moderate a Man, would say the same with regard to the secret imprisonments, the *lettres de cachet*, and other arbitrary deviations from the settled course of law, which often take place in that kingdom, and in the other Monarchies of Europe. No doubt, if he was the Man we suppose, he would confess the expedients we mention have in numberless instances been villainously prostituted

to gratify the wantonneſs and private revenge of Miniſters, or of thoſe who had any intereſt with them; but ſtill perhaps he would continue to give it as his opinion, that the Crown, notwithſtanding its apparently immenſe ſtrength, cannot avoid recurring at times to expedients of this kind; much leſs could it publicly and abſolutely renounce them for ever.

It is therefore a moſt advantageous circumſtance in the Engliſh Government, that its ſecurity renders all ſuch expedients unneceſſary, and that the Repreſentatives of the People have not only been conſtantly willing to promote the public liberty, but that the general ſituation of affairs has alſo enabled them to carry their precautions ſo far as they have done. And indeed, when we conſider what prerogatives the Crown, in England, has ſincerely renounced—that in conſequence of the independence conferred on the Judges, and of the method of *Trial by Jury*, it is deprived of all means of influencing the ſettled courſe of the law both in civil and criminal matters,—that it has renounced all power of ſeizing the property of individuals, and even of reſtraining in any manner whatſoever, and for the ſhorteſt time, the liberty of their perſons, we do not know what we ought moſt to admire, whether the public virtue of thoſe who have deprived

the ſupreme Executive Power of all thoſe dangerous prerogatives, or the nature of that ſame Power, which has enabled it to give them up without ruin to itſelf—whether the happy frame of the Engliſh Government, which makes thoſe in whom the People truſt, continue ſo faithful in the diſcharge of their duty, or the ſolidity of that ſame Government, which really can afford to leave to the People ſo extenſive a degree of freedom (*a*).

Again, the Liberty of the Preſs, that great advantage enjoyed by the Engliſh Nation,

(*a*) At the times of the invaſions of the Pretender, aſſiſted by the forces of hoſtile nations, the *Habeas Corpus* Act was indeed ſuſpended (which by the bye may ſerve as one proof, that in proportion as a Government is any how in danger, it becomes neceſſary to abridge the liberty of the ſubject) ; but the executive power did not thus of itſelf ſtretch its own authority ; the precaution was deliberated upon and taken by the Repreſentatives of the People; and the detaining of individuals in conſequence of the ſuſpenſion of the Act, was limited to a certain fixed time. Notwithſtanding the juſt fears of internal and hidden enemies which the circumſtances of the times might raiſe, the deviation from the former courſe of the law was carried no farther than the ſingle point we have mentioned : Perſons detained by order of the Government, were to be dealt with in the ſame manner as thoſe arreſted at the ſuit of private individuals : the proceedings againſt them were to be carried on no otherwiſe than in a public place ; they were to be tried by their Peers, and have all the uſual legal means of defence allowed to them, ſuch as calling of witneſſes, peremptory challenge of Juries, &c.

does not exiſt in any of the other Monarchies of Europe, however well eſtabliſhed their power may at firſt ſeem to be; and it might even be demonſtrated that it cannot exiſt in them. The moſt watchful eye, we ſee, is conſtantly kept in thoſe Monarchies upon every kind of publication; and a jealous attention is paid even to the looſe and idle ſpeeches of individuals. Much unneceſſary trouble (we may be apt at firſt to think) is taken upon this ſubject; but yet if we conſider how uniform the conduct of all thoſe Governments is, how conſtant and unremitted their cares in thoſe reſpects, we ſhall become convinced, without looking farther, that there muſt be ſome ſort of neceſſity for their precautions.

In Republican States, for reaſons which are at bottom the ſame as in the before-mentioned Governments, the People are alſo kept under the greateſt reſtraints by thoſe who are at the head of the State. In the Roman Commonwealth, for inſtance, the liberty of writing was curbed by the ſevereſt laws (*a*): with regard to the freedom of ſpeech, things were but little

(*a*) The Law of the Twelve Tables had eſtabliſhed the puniſhment of death againſt the author of a Libel: nor was it by a *Trial by Jury* that they determined what was to be called a Libel. SI QUIS CARMEN OCCENTASSIT, ACTITASSIT, CONDIDISSIT, QUOD ALTERI FLAGITIUM FAXIT, CAPITAL ESTO.

better, as we may conclude from ſeveral facts; and many inſtances may even be produced of the dread with which the private Citizens, upon certain occaſions, communicated their political opinions to the Conſuls, or to the Senate. In the Venetian Republic, the preſs is moſt ſtrictly watched: nay, to forbear to ſpeak in any matter whatſoever on the conduct of the Government, is the fundamental maxim which they inculcate on the minds of the People throughout their dominions. (*a*).

(*a*) Of this I have myſelf ſeen a proof ſomewhat ſingular, which I beg leave of the Reader to relate. Being, in the year 1768, at Bergamo, the firſt town of the Venetian State, as you come into it from the State of Milan, about an hundred and twenty miles diſtant from Venice, I took a walk in the evening in the neighbourhood of the Town; and wanting to know the names of ſeveral places which I ſaw at a diſtance, I ſtopped a young Countryman to aſk him information. Finding him to be a ſenſible young man, I entered into ſome farther converſation with him; and as he had himſelf a great inclination to ſee Venice, he aſked me whether I propoſed to go there? I anſwered that I did: on which he immediately warned me, when I was at Venice not to ſpeak of the Prince *(del Prencipe)*, an appellation aſſumed by the Venetian Government, in order, as I ſuppoſe, to convey to the People a greater idea of their union among themſelves. As I wanted to hear him talk farther on the ſubject, I pretended to be entirely ignorant in that reſpect, and aſked for what reaſon I muſt not ſpeak of the Prince? But he (after the man-

With respect therefore to this point, it may again be looked upon as a most advantageous circumstance in the English Government, that those who have been at the head of the People, have not only been constantly disposed to procure the public liberty, but also that they have found it possible for them to do so; and that the remarkable strength and steadiness of the Government has admitted of that extensive freedom of speaking and writing which the People of England enjoy. A most advantageous privilege, this! which, affording to every Man a means of laying his complaints before the Public, procures him almost a certainty of redress against any act of oppression that he may have been exposed to: and which leaving, moreover, to every Subject a right to give his opinion on all public matters, and, by thus influencing the sentiments of the Nation, to influence those of the Legislature itself (which is sooner or later obliged to pay a deference to them), procures to him a sort of Legislative

ner of the common people in Italy, who, when strongly affected by any thing, rather choose to express themselves by some vehement gesture, than by words) ran the edge of his hand, with great quickness, along his neck, meaning thereby to express, that being strangled, or having one's throat cut, was the instant consequence of taking such liberty.

authority of a much more efficacious and beneficial nature than any formal right he might enjoy of voting by a mere *yea* or *nay*, upon general propofitions fuddenly offered to him, and which he could have neither a fhare in framing, nor any opportunity of objecting to, and modifying.

A privilege which, by raifing in the People a continual fenfe of their fecurity, and affording them undoubted proofs that the Government, whatever may be its form, is ultimately deftined to enfure the happinefs of thofe who live under it, is both one of the greateft advantages of Freedom, and its fureft characteriftic. The kind of fecurity as to their perfons and poffeffions which Subjects who are totally deprived of that privilege, enjoy at particular times, under other Governments, perhaps may intitle them to look upon themfelves as the well adminiftered property of Mafters who rightly underftand their own interefts; but it is the right of canvaffing without fear the conduct of thofe who are placed at their head, which conftitutes a free Nation (*a*).

(*a*) If we confider the great advantages to public liberty which refult from the inftitution of the Trial by Jury, and from the Liberty of the Prefs, we fhall find England to be

The unbounded freedom of debate poſſeſſed by the Engliſh Parliament, is alſo a conſequence of the peculiar ſtability of the Government. All Sovereigns have agreed in their jealouſy of Aſſemblies of this kind, in their dread of the privileges of Aſſemblies who attract in ſo high a degree the attention of the reſt of the People, who in a courſe of time become connected by ſo many eſſential ties with the bulk of the Nation, and acquire ſo much real influence by the eſſential ſhare they muſt needs have in the management of public affairs, and by the eminent ſervices, in ſhort, which they are able to perform to the Community (*a*). Hence it has happened that Monarchs, or ſingle Rulers, in all Countries, have endeavoured to diſpenſe with the Aſſiſtance of Aſſemblies like thoſe we mention, notwithſtanding the capital

in reality a more Democratical State than any other we are acquainted with. The Judicial power, and the Cenſorial power, are veſted in the People.

(*a*) And which they do actually perform, till they are able to throw off the reſtraints of impartiality and moderation; a thing which, being Men, they never fail to do when their influence is generally eſtabliſhed, and proper opportunities offer. Sovereigns know theſe things, and dread them.

advantages they might have derived from their ſervices towards the good government of the State; or if the circumſtances of the times have rendered it expedient for them to call ſuch Aſſemblies together, they have uſed the utmoſt endeavours in abridging thoſe privileges and legiſlative claims which they ſoon found to prove ſo hoſtile to their ſecurity: in ſhort, they have ever found it impracticable to place any unreſerved truſt in public Meetings of this kind.

We may here name Cromwell, as he was ſupported by a numerous army, and poſſeſſed more power than any foreign Monarch who has not been ſecured by an armed force. Even after he had *purged*, by the agency of Colonel Pride and two regiments, the Parliament that was ſitting when his power became ſettled, thereby thruſting out all his opponents to the amount of about two hundred, he ſoon found his whole authority endangered by their proceedings, and was at laſt under a neceſſity of turning them out in the military manner with which every one is acquainted. Finding ſtill a Meeting of this kind highly expedient to legalize his military authority, he called together that Aſſembly which was called *Barebone's* Parliament. He had himſelf choſen the Members

of this Parliament to the number of about an hundred and twenty, and they had ſeverally received the ſummons from him: yet notwithſtanding this circumſtance, and the total want of perſonal weight in moſt of the Members, he began in a very few months, and in the midſt of his powerful victorious army, to feel a ſerious alarm at their proceedings; he ſoon heard them talk of their own divine commiſſion, and of the authority they had received from the *Lord*; and, in ſhort, finding he could not truſt them, he employed the offices of a ſecond Colonel, to effect their diſmiſſion. Being now dignified with the legal appellation of *Protector*, he ventured to call a Parliament elected by conſiderable parts of the People; but though the exiſtence of this Parliament was grounded, we might ſay grafted, upon his own; and though bands of Soldiers were even poſted in the avenues to keep out all ſuch Members as refuſed to take certain perſonal engagements to him, he made ſuch haſte, in the iſſue, to rid himſelf of their preſence, as to contrive a mean quibble or device to ſhorten the time of their ſitting by ten or twelve days (*a*). To a fourth Aſ-

(*a*) They were to have ſat five months; but Cromwell pretended that the months were to conſiſt of only twenty-

sembly he again applied; but, though the elections had been so managed as to procure him a formal tender of the Crown during the first sitting, he put a final end to the second with resentment and precipitation (*a*).

The example of the Roman Emperors, whose power was outwardly so prodigious, may also be introduced here. They used to show the utmost jealousy in their conduct with respect to the Roman Senate; and that Assembly, which the prepossession of the People, who looked upon it as the ancient remains of the Republic, had made it expedient to continue, were not suffered to assemble but under the drawn scymitars of the Prætorian guards.

Even the Kings of France, though their authority is so unquestioned, so universally respected, as well as strongly supported, have felt frequent anxiety from the claims and proceedings of the Parliament of Paris; an Assembly

eight days; as this was the way of reckoning time used in paying the army, and the fleet.

(*a*) The history of the conduct of the deliberating and debating Assemblies we are alluding to, in regard to the Monarchs, or single Rulers of any denomination, who summon them together, may be expressed in a very few words. If the Monarch is unarmed, they over-rule him so as almost entirely to set him aside; if his power is of a military kind, they form connections with the army.

of ſo much leſs weight than the Engliſh Parliament. The alarm has been mentioned which the late King at laſt expreſſed concerning their meaſures, as well as the expedient to which he reſorted to free himſelf from their preſence. And when the preſent King thought proper to call again this Parliament together, a meaſure highly prudent in the beginning of his reign, every jealous precaution was at the ſame time taken to abridge thoſe privileges of deliberating and remonſtrating upon which any diſtant claim to, or ſtruggle for, a ſhare of the ſupreme authority might be grounded.

It may be objected that the pride of Kings, or ſingle Rulers, makes them averſe to the exiſtence of Aſſemblies like thoſe we mention, and deſpiſe the capital ſervices which they might derive from them for the good government of their Kingdoms. I grant it may in ſome meaſure be ſo. But if we examine into the general ſituation of affairs in different States, and into the examples with which their Hiſtory ſupplies us, we ſhall alſo find that the pride of thoſe Kings agrees in the main with the intereſt and quiet of their Subjects, and that their preventing the Aſſemblies we ſpeak of from meeting, or, when met, from aſſuming too large a

ſhare in the management of public affairs, is, in a great meaſure, matter of neceſſity.

We may therefore reckon it as a very great advantage, that, in England, no ſuch neceſſity exiſts. Such is the frame of the Government, that the Supreme executive authority can both give leave to aſſemble, and ſhew the moſt unreſerved truſt, when aſſembled, to thoſe two Houſes which concur together to form the Legiſlature.

Theſe two Houſes, we ſee, enjoy the moſt complete freedom in their debates, whether the ſubject be *grievances*, or regulations concerning government matters of any kind: no reſtriction whatever is laid upon them; they may ſtart any ſubject they pleaſe. The Crown is not to take any notice of their deliberations: its wiſhes, or even its name, are not to be introduced in the debates. And, in ſhort, what makes the freedom of deliberating, exerciſed by the two Houſes, really to be unlimited, unbounded, is the privilege, or ſovereignty we may ſay, enjoyed by each within its own walls, in conſequence of which nothing done or ſaid in Parliament, is to be queſtioned in any place out of Parliament. Nor will it be pretended by thoſe perſons who are acquainted with the Engliſh Hiſtory, that thoſe privileges of Parliament

we mention are nominal privileges, only privileges upon paper, which the Crown has disregarded whenever it has thought proper, and to the violations of which the Parliament have ufed very tamely to fubmit. That thefe remarkable advantages,—that this total freedom from any compulfion or even fear, and in fhort this unlimited liberty of debate, fo ftrictly claimed by the Parliament, and fo fcrupuloufly allowed by the Crown, fhould be exercifed year after year during a long courfe of time, without producing the leaft relaxation in the execution of the laws, the fmalleft degree of anarchy, are certainly very fingular political phenomena.

It may be faid that the remarkable Solidity of the governing Executive authority, in England, operates to the advantage of the People with refpect to the objects we mention, in a twofold manner. In the firft place, it takes from the great Men in the Nation all ferious ambition to invade this authority, thereby preventing thofe anarchical and more or lefs bloody ftruggles to refult from their debates, which have fo conftantly difturbed other Countries. In the fecond place, it infpires thofe Great Men with that falutary jealoufy of the fame authority which leads them to frame fuch effectual provi-

ſions for laying it under proper reſtraints. On which I ſhall obſerve, by way of a ſhort digreſſion, that this diſtinguiſhed *ſtability* of the executive authority of the Engliſh Crown, affords an explanation for the peculiar manner in which public commotions have conſtantly been terminated in England, compared with the manner in which the ſame events have been concluded in other Kingdoms. When I mentioned, in a former Chapter, this peculiarity in the Engliſh Government, I mean the accuracy, impartiality, and univerſality, of the proviſions by which peace, after internal diſturbances, has been reſtored to the Nation, I confined my compariſons to inſtances drawn from Republican Governments, purpoſely poſtponing to ſay any thing of Governments of a Monarchical form, till I had introduced the very eſſential obſervation contained in this Chapter, which is, that the power of *Crowns*, in other Monarchies, has not been able, by itſelf, to produce the ſame effects it has in England, that is, has not been able to inſpire the Great Men in the State with any thing like that ſalutary jealouſy we mention, nor of courſe to induce them to unite in a real common cauſe with the reſt of the People. In other Monar-

chies (*a*), thoſe Men who, during the continuation of the public diſturbances, were at the head of the People, finding it in their power, in the iſſue, to parcel out, more or leſs, the Supreme governing authority (or even the State itſelf) and to transfer the ſame to themſelves, conſtantly did ſo, in the ſame manner, and from the very ſame reaſons, as it conſtantly happened in the ancient Commonwealths; thoſe Monarchical Governments being in reality, ſo far as that, of a Republican nature: and the governing authority was left, at the concluſion, in the ſame undefined extent it had before (*b*). But in England, the great Men in the Nation finding themſelves in a ſituation eſſentially different, loſt no time in purſuits like thoſe in which the great Men of other countries uſed to indulge themſelves on the occaſion we mention. Every Member of the Legiſlature plainly perceived, from the general aſpect of affairs

(*a*) I mean, before the introduction of thoſe numerous ſtanding armies which are now kept by all the Crowns of Europe: ſince that epoch, which is of no very ancient date, no Treaty has been entered into by thoſe Crowns with any Subjects.

(*b*) As a remarkable inſtance of ſuch a Treaty may be mentioned that by which the War *for the Public good* was terminated in France. It is quoted in page 30 of this Work.

and his feelings, that the Supreme executive authority in the State muſt in the iſſue fall ſomewhere undivided, and continue ſo; and being moreover ſenſible, that neither perſonal advantages of any kind, nor the power of any faction, but the law alone, could afterwards be an effectual reſtraint upon its motions, they had no thought or aim left, except the framing with care thoſe laws on which their own liberty was to continue to depend, and to reſtrain a power which they, ſomehow, judged it ſo impracticable to transfer to themſelves or their party, or to render themſelves independent of. Theſe obſervations I thought neceſſary to be added to thoſe in the fifteenth Chapter, to which I now refer the reader.

Nor has the great freedom of canvaſſing political ſubjects we have deſcribed, been limited to the Members of the Legiſlature, or confined to the walls of Weſtminſter, that is, to that excluſive ſpot on which the two Houſes meet: the like privilege is allowed to the other orders of the people; and a full ſcope is given to that ſpirit of party, and a complete ſecurity inſured to thoſe numerous and irregular meetings, which, eſpecially when directed to matters of government, create ſo much uneaſineſs in the Sovereigns of other Countries.

Individuals even may, in ſuch meetings, take an active part for procuring the ſucceſs of thoſe public ſteps which they wiſh to ſee purſued; they may frame petitions to be delivered to the Crown, or to both Houſes, either to procure the repeal of meaſures already entered upon by Government, or to prevent the paſſing of ſuch as are under conſideration, or to obtain the enacting of new regulations of any kind: they may ſeverally ſubſcribe their names to ſuch petitions: the law ſets no reſtriction on their numbers; nor has it, we may ſay, taken any precaution to prevent even the abuſe that might be made of ſuch freedom.

That mighty political engine, the preſs, is alſo at their ſervice; they may avail themſelves of it to advertiſe the time and place, as well as the intent of the meetings, and moreover to ſet off and inculcate the advantages of thoſe notions which the wiſh is to ſee adopted.

Such meetings may be repeated; and every individual may deliver what opinion he pleaſes on the propoſed ſubjects, though ever ſo directly oppoſite to the views or avowed deſigns of the Government. The Member of the Legiſlature may, if he chooſes, have admittance among them, and again enforce thoſe topics which have not obtained the ſucceſs he expected, in

that Houſe to which he belongs. The diſappointed Stateſman, the Miniſter turned out, alſo find the door open to them: they may bring in the whole weight of their influence and of their connections: they may exert every nerve to enliſt the Aſſembly in the number of their ſupporters: they are bid to do their worſt: they fly through the Country from one place of meeting to another: the clamour increaſes: the Conſtitution, one may think, is going to be ſhaken to its very foundations:—but theſe mighty ſtruggles, by ſome means or other, always find a proportionate degree of re-action: new difficulties, and at laſt inſuperable impediments, grow up in the way of thoſe who would take advantage of the general ferment to raiſe themſelves on the wreck of the governing authority: a ſecret force exerts itſelf, which gradually brings things back to a ſtate of moderation and calm; and that ſea ſo ſtormy, to appearance ſo deeply agitated, conſtantly ſtops at certain limits which it ſeems as if it wanted the power to paſs.

The impartiality with which juſtice is dealt to all orders of Men in England, is alſo in great meaſure owing to the peculiar ſtability of the Government: the very remarkable, high degree, to which this impartiality is carried, is

one of thofe things which, being impoffible in other Countries, are poffible under the Government of this Country. In the ancient Commonwealths, from the inftances that have been introduced in a former place, and from others that might be quoted, it is evident that no redrefs was to be obtained for the acts of injuftice or oppreffion committed by the Men poffeffed of influence or wealth upon the inferior Citizens. In the Monarchies of Europe, in former times, abufes of a like kind prevailed to a moft enormous degree. In our days, notwithftanding the great degrees of ftrength acquired by the different Governments, it is matter of the utmoft difficulty for fubjects of the inferior claffes to obtain the remedies of the law againft certain individuals: in fome Countries it is impoffible, let the abufe be ever fo flagrant; an open attempt to purfue fuch remedies being moreover attended with danger. Even in thofe Monarchies of Europe in which the Government is fupported both by real ftrength, and by civil inftitutions of a very advantageous nature, great differences prevail between individuals in regard to the facility of obtaining the remedies of the law; and to feek for redrefs is at beft, in many cafes, fo arduous and precarious an attempt as to take from injured individuals

all thoughts of encountering the difficulty. Nor are these abuses we mention, in the former or present Governments of Europe, to be attributed only to the want of resolution in the Heads of these Governments. In some Countries, the Sovereign, by an open design to suppress these abuses, would have endangered at once his whole authority; and in others, he would find obstructions multiply so in his way as to compel him, and perhaps soon enough too, to drop the undertaking.—How can a Monarch make, alone, a persevering stand against the avowed expectations of all the great Men by whom he is surrounded, and against the loud claims of powerful classes of individuals? In a Commonwealth, what is the Senate to do when they find that their refusing to protect a powerful offender of their own class, or to indulge some great Citizen with the impunity of his friends, is likely to be productive of serious divisions among themselves, or perhaps to disturbances among the People?

If we cast our eyes on the strict and universal impartiality with which justice is administered in England, we shall soon become convinced that some inward essential difference exists between the English Government, and those of other Countries, and that its power is

founded on causes of a distinct nature. Individuals of the most exalted rank do not entertain so much as the thought to raise the smallest direct opposition to the operation of the law. The complaint of the meanest Subject, if preferred and supported in the usual way, immediately meets with a serious regard. The Oppressor of the most extensive influence, though in the midst of a train of retainers, nay, though in the fullest flight of his career and pride, and surrounded by thousands of applauders and partisans, is stopped short at the sight of the legal paper, which is delivered into his hands, and a Tipstaff is sufficient to bring him away, and produce him before the Bench.

Such is the *greatness* and uninterrupted *prevalence* of the law (*a*), such is in short the continuity of omnipotence, of resistless superiority, it exhibits, that the extent of its effects at length ceases to be a subject of observation to the Public.

Nor are great or wealthy Men to seek for redress or satisfaction of any kind, by any other means than such as are open to all: even the Sovereign has bound himself to resort to no other: and experience has shewn that he may, without danger, trust the protection of his per-

(*a*) *Lex magna est & prævalebit.*

ſon, and of the places of his reſidence, to the ſlow and litigious aſſiſtance of the law (*a*).

Another very great advantage attending this remarkable ſtability of the Engliſh Government we are deſcribing, is, that the ſame is operated without the aſſiſtance of an armed ſtanding force: the conſtant expedient this, of all other Governments. On this occaſion I ſhall introduce a paſſage of Doctor Adam Smith (*b*), in a Work publiſhed ſince the preſent Chapter was firſt written, in which paſſage an opinion certainly erroneous is contained: the miſtakes of perſons of his very great abilities deſerve attention. This Gentleman, ſtruck with the neceſſity of a ſufficient power of re-action, of a ſufficient ſtrength on the ſide of Government, to reſiſt the agitations attending on liberty, has looked round, and judged the Engliſh Government derived the ſingular ſtability it manifeſts from the ſtanding force it has at its diſpoſal: the following are his expreſſions. "To a Sove-"reign who feels himſelf ſupported, not only by

(*a*) I remember, during the time after my firſt coming to this Country, I took notice of the boards ſet up from place to place behind the incloſure of Richmond Park. "Whoever "treſpaſſes upon this ground will be *proſecuted.*"

(*b*) An *Inquiry into the Nature and Cauſes of the Wealth of Nations*. Book V. Chap. I. Vol. II. p. 313, 314.

"the natural Ariſtocracy of the Country, but "by a well-regulated ſtanding army, the rudeſt, "the moſt groundleſs, and the moſt licentious "remonſtrances can give little diſturbance. "He can ſafely pardon or neglect them, and "his conſciouſneſs of his ſuperiority naturally "diſpoſes him to do ſo. *That degree of liberty* "*which approaches to licentiouſneſs, can be tole-* "*rated only in Countries where the Sovereign is ſe-* "*cured by a well-regulated ſtanding army* (*a*)."

The above poſitions are grounded on the notion that an army places in the hand of the Sovereign an united irreſiſtible ſtrength, a ſtrength liable to no accident, difficulties, or exceptions; a ſuppoſition this, which is not conformable to experience. If a Sovereign was endued with a kind of extraordinary power attending on his perſon, at once to lay under water whole legions of inſurgents, or to repulſe and ſweep them away by flaſhes and ſhocks of the electrical fluid, then indeed he might uſe the great forbearance above deſcribed:—though it is not perhaps very likely he would put up

(*a*) The Author's deſign in the whole paſſage, is to ſhew that ſtanding armies, under proper reſtrictions, cannot be hurtful to public liberty; and may in ſome caſes be uſeful to it, by freeing the Sovereign from any troubleſome jealouſy in regard to this liberty.

with the *rude* and *groundleſs* remonſtrances of his ſubjects, and with their *licentious* freedom, yet he might, with ſafety, do or not do ſo, at his own choice. But an army is not that ſimple weapon which is here ſuppoſed. It is formed of Officers and Soldiers who feel the ſame paſſions with the reſt of the people, the ſame diſpoſition to promote their own intereſt and importance, when they find out their ſtrength, and proper opportunities offer. What will therefore be the reſource of the Sovereign, if, into that army on the aſſiſtance of which he relies, the ſame party ſpirit creeps by which his other Subjects are actuated? Whereto will he take his refuge, if the ſame political caprices, abetted by the ſerious ambition of a few leading Men, the ſame reſtleſſneſs, and at laſt perhaps the ſame diſaffection, begin to pervade the ſmaller kingdom of the army, by which the main Kingdom or Nation are agitated?

The prevention of dangers like thoſe juſt mentioned, conſtitutes the moſt eſſential part of the precautions and ſtate craft of Rulers, in thoſe Governments which are ſecured by ſtanding armed forces. Mixing the troops formed of natives with foreign auxiliaries, diſperſing them in numerous bodies over the country, and continually ſhifting their quarters, are among

the methods that are ufed; which it does not belong to our fubject to enumerate, any more than the extraordinary expedients employed by the Eaftern Monarchs for the fame purpofes. But one caution very effential to be mentioned here, and which the Governments we allude to never fail to take before every other, is to retrench from their unarmed Subjects, a freedom which, tranfmitted to the Soldiery, would be attended with fo fatal confequences: hindering fo bad examples from being communicated to thofe in whofe hands their power and life are trufted, is what every notion of felf-prefervation fuggefts to them: every weapon is accordingly exerted to fupprefs the rifing and fpreading of fo awful a contagion.

In general, it may be laid down as a maxim, that, where the Sovereign looks to his army for the fecurity of his perfon and authority, the fame military laws by which this army is kept together, muft be extended over the whole Nation: not in regard to military duties and exercifes; but certainly in regard to all that relates to the refpect due to the Sovereign and to his orders. The martial law concerning thefe tender points, muft be univerfal. The jealous regulations concerning mutiny and contempt of orders, cannot be feverely enforced on

that part of the Nation which ſecures the ſubjection of the reſt, and enforced too through the whole ſcale of military ſubordination, from the Soldier to the Officer, up to the very Head of the military Syſtem,—while the more numerous and inferior part of the People are left to enjoy an unreſtrained freedom :—that ſecret diſpoſition which prompts Mankind to reſiſt and counteract their Superiors, cannot be ſurrounded by ſuch formidable checks on the one ſide, and be left to be indulged to a degree of licentiouſneſs and wantonneſs on the other.

In a Country where an army is kept, capable of commanding the obedience of the Nation, this army will both imitate for themſelves the licentiouſneſs above mentioned, and check it in the People. Every Officer and Soldier, in ſuch a Country, claims a ſuperiority in regard to other individuals; and, in proportion as their aſſiſtance is relied upon by the Government, expect a greater or leſs degree of ſubmiſſion from the reſt of the People (*a*).

(*a*) In the beginning of the paſſage which is here examined, the Author ſays, "Where the Sovereign is him-"ſelf the General, and the principal Nobility and Gentry "of the Country, the chief Officers of the army,—where "the military force is placed under the command of "thoſe who have the greateſt intereſt in the ſupport of

The ſame Author concludes his above quoted obſervations concerning the ſecurity of the

"the civil authority, becauſe they have the greateſt ſhare "of that authority, a ſtanding army can never be dangerous to liberty. On the contrary, it may in ſome "caſes be favourable to liberty, &c. &c."—in a Country ſo circumſtanced, a ſtanding army can never be dangerous to liberty: no, not the liberty of thoſe principal Nobility and Gentry, eſpecially if they have wit enough to form combinations among themſelves againſt the Sovereign. Such an union as is here mentioned, of the civil and military powers, in the Ariſtocratical body of the Nation, leaves both the Sovereign and the People without reſource. If the former Kings of Scotland had imagined to adopt the expedient of a ſtanding army, and had truſted this army, thus defrayed by them, to thoſe Noblemen and Gentlemen who had rendered themſelves hereditary Admirals, hereditary High Stewards, hereditary High Conſtables, hereditary Great Chamberlains, hereditary Juſtices General, hereditary Sheriffs of Counties, &c. they would have but badly mended the diſorders under which the Government of their Country laboured: they would only have ſupplied theſe Nobles with freſh weapons againſt each other, againſt the Sovereign, and againſt the People.

If thoſe Members of the Britiſh Parliament, who ſometimes make the whole Nation reſound with the clamour of their diſſenſions, had an army under their command which they might engage in the ſupport of their pretenſions, the reſt of the People would not be the better for it. Happily the ſwords are ſecured, and force is removed from their Debates.

The Author we are quoting, has deemed a Government

power of an armed Sovereign, by immediately adding, " It is in ſuch Countries only that it " is unneceſſary that the Sovereign ſhould be " truſted with any diſcrétionary power for " ſuppreſſing even the wantonneſs of this li- " centious liberty." The idea here expreſſed coinciding with thoſe already diſcuſſed, I ſhall ſay nothing farther on the ſubject. My reaſon for introducing the above expreſſions, has been, that they lead me to take notice of a remarkable circumſtance in the Engliſh Government. From the expreſſion, *it is unneceſſary the Sovereign ſhould be truſted with any diſcretionary power*, the Author appears to think that a Sovereign at the head of an army, and whoſe power is ſecured by this army, uſes to wait to ſet himſelf in motion, till he has received leave for that purpoſe, that is, till he has been truſted with a power for ſo doing. This notion in the Author we quote, is borrowed from the ſteady and thoroughly legal Government of this Country; but the like law doctrine, or principle, obtains under no other Government. In all Monarchies

to be a ſimpler machine, and an army a ſimpler inſtrument, than they in reality are. Like many other perſons of great abilities, while ſtruck with a certain peculiar conſideration, he has overlooked others no leſs important.

(and it is the ſame in Republics) the Executive power in the State is ſuppoſed to poſſeſs, originally and by itſelf, all manner of lawful authority: every one of its exertions is deemed to be legal; and they do not ceaſe to be ſo, till they are ſtopped by ſome expreſs and poſitive regulation. The Sovereign, and alſo the civil Magiſtrate, till ſo ſtopped by ſome poſitive law, may come upon the Subject when they chooſe; they may queſtion any of his actions; they may conſtrue them into unlawful acts; and inflict a penalty, as they pleaſe: in theſe reſpects they may be thought to abuſe, but not to exceed, their power. The authority of the Government, in ſhort, is ſuppoſed to be unlimited ſo far as there are no viſible boundaries ſet up againſt it: behind and within theſe boundaries, lies whatever degree of liberty the Subject may poſſeſs.

In England, the very reverſe obtains. It is not the authority of the Government, it is the liberty of the Subject, which is ſuppoſed to be unbounded. All the Individual's actions are ſuppoſed to be lawful, till that law is pointed out which makes them to be otherwiſe. The *onus probandi* is here transferred from the Subject to the Prince. The Subject is not at any time to ſhew the grounds of his conduct. When the

Sovereign or Magiſtrate think proper to exert themſelves, it is their buſineſs, to find out and produce the law in their own favour, and the prohibition againſt the Subject (*a*).

(*a*) I ſhall take the liberty to mention another fact reſpecting myſelf, as it may ſerve to elucidate the above obſervations; or at leaſt my manner of expreſſing them. I remember when I was beginning to pay attention to the operations of the Engliſh Government, I was under a prepoſſeſſion of quite a contrary nature to that of the Gentleman whoſe opinions have been above diſcuſſed: I uſed to take it for granted that every article of liberty the Subject enjoys in this Country, was grounded upon ſome poſitive law by which this liberty was inſured to him. In regard to the freedom of the preſs I had no doubt but it was ſo, and that there exiſted ſome particular law, or rather ſeries of laws or legiſlative paragraphs, by which this freedom was defined and carefully ſecured: and as the liberty of writing happened at that time to be carried very far, and to excite a great deal of attention (the noiſe about the Middleſex election had not yet ſubſided), I particularly wiſhed to ſee thoſe laws I ſuppoſed, not doubting but there muſt be ſomething remarkable in the wording of them. I looked into thoſe law books I had opportunities to come at, ſuch as Jacob's and Cunningham's *Law Dictionaries*, Wood's *Inſtitutes*, and Judge Blackſtone's *Commentaries*. I alſo found means to have a ſight of Comyns's *Digeſt of the Laws of England*, and I was again diſappointed: this Author, though this Work conſiſts of five folio Volumes, had not had, any more than the Authors juſt mentioned, any room to ſpare for the intereſting law I was in ſearch of. At length it occurred to me, though not immediately, that this liberty of the

This kind of law principle, owing to the general ſpirit by which all parts of the Government are influenced, is even carried ſo far, that any quibble, or trifling circumſtance, by which an Offender may be enabled to ſtep aſide, and eſcape, though ever ſo narrowly, the reach of the law, are ſufficient to ſcreen him from puniſhment, let the immorality or intrinſic guilt of his conduct be ever ſo openly admitted (*a*).

Such a narrow circumſcription of the exertions of the Government, is very extraordinary: it does not exiſt in any Country but this, nor

Preſs was grounded upon its not being prohibited,—that this want of prohibition was the ſole, and at the ſame time ſolid, foundation of it. This led me, when I afterwards thought of writing ſomething upon the Government of this Country, to give the definition of the freedom of the preſs, which is contained in p. 296, 297: adding to it the important conſideration of all actions reſpecting publications being to be decided by a Jury.

(*a*) A number of inſtances, ſome even of a ludicrous kind, might be quoted in ſupport of the above obſervation. Even only a trifling flaw in the words of an Indictment, is enough to make it void. The reader is alſo referred to the fact mentioned in the note, p. 180, and to that in p. 317, 318, of this Work.

I do not remember the name of that Party Writer who, having publiſhed a treaſonable writing in regard to which he eſcaped puniſhment, uſed afterwards to anſwer to his friends when they reproached him with his raſhneſs, *I know I was writing within an inch of the gallows.* The law

could it. The ſituation of other Governments is ſuch that they cannot thus allow themſelves to be ſhut out of the unbounded ſpace unoccupied by any law, in order to have their motions confined to that ſpot which expreſs and previouſly declared proviſions have chalked out. The power of theſe Governments being conſtantly attended with more or leſs precariouſneſs, there muſt be a degree of diſcretion anſwerable to it (*a*).

The foundation of that law principle, or doctrine, which confines the exertion of the power of the Government to ſuch caſes only as are expreſſed by a law in being, was laid when the Great Charter was paſſed: this reſtriction was implied in one of thoſe general impartial articles which the Barons united with the People to obtain from the Sovereign. The Crown, at that time, derived from its foreign

being both aſcertained and ſtrictly adhered to, he had been enabled to bring his words and poſitions ſo nicely within compaſs.

(*a*) It might perhaps alſo be proved, that the great lenity uſed in England in the adminiſtration of criminal juſtice, both in regard to the mildneſs, and to the frequent remitting of puniſhments, is eſſentially connected with the ſame circumſtance of the *ſtability* of the Government. Experience ſhews that it is needleſs to uſe any great degree of harſhneſs and ſeverity in regard to Offenders; and the Supreme governing authority is under no neceſſi ty of ſhew

dominions, that ſtability and inward ſtrength in regard to the Engliſh Nation, which is now in a ſecret hidden manner annexed to the Civil branch of its office, and which, though operating by different means, continues to maintain that kind of confederacy againſt it, and union between the different orders of the People. By the article in *Magna Charta* here alluded to, the Sovereign bound himſelf neither to *go*, nor *ſend*, upon the Subject, otherwiſe than by the Trial of Peers, and the Law of the land (*a*). This article was however afterwards diſregarded in practice, in conſequence of the lawful efficiency which the King claimed for his *Proclamations*, and eſpecially by the inſtitution of the Court of *Star Chamber*, which grounded its proceedings not only upon theſe Proclamations, but alſo upon the particular rules it choſe to frame within itſelf. By the abolition of this Court (and alſo of the Court of High Commiſſion) in the reign of Charles the Firſt, the above proviſion of the Great Charter was put in actual force; and it has appeared by the

ing the ſubordinate Magiſtracies any bad example in that reſpect.

(*a*) . . . . *Nec ſuper eum ibimus, nec ſuper eum mittemus, niſi per legale judicium parium vel per legem terræ.* Cap. XXIX.

event, that the very extraordinary reftriction upon the governing authority we are alluding to, and its execution, are no more than what the intrinfic fituation of things, and the ftrength of the Conftitution, can bear (*a*).

The law doctrine we have above defcribed, and its being ftrictly regarded by the High governing authority, I take to be the moft characteriftic circumftance in the Englifh Government, and the moft pointed proof that can be given of the true freedom which is the confequence of its frame. The practice of the Executive authority thus to fquare its motions upon fuch laws, and fuch only, as are afcertained and declared before-hand, cannot be the

(*a*) The Court of Star Chamber was like a Court of Equity in regard to criminal matters; it took upon itfelf to decide upon thofe cafes of offence upon which the ufual Courts of Law, when uninfluenced by the Crown, refufed to decide, either on account of the filence of the laws in being, or of the particular rules they had eftablifhed within themfelves; which is exactly the office of the Court of Chancery (and of the Exchequer) in regard to matters of property. (See back, p. 138.) The great ufefulnefs of Courts of this kind has caufed the Courts of Equity in regard to civil matters, to be fupported and continued: but experience has fhewn, as is above obferved, that no effential inconvenience can arife from the Subject being indulged with the very great freedom he has acquired by the total abolition of all arbitrary or provifional Courts in regard to criminal matters.

refult of that kind of ftability which the Crown might derive from being fupported by an armed force, or, as the above-mentioned Author has expreffed it, from the Sovereign being the General of an army: fuch a rule of acting is even contradictory to the office of a General: the operations of a General eminently depend for their fuccefs, on their being fudden, unforefeen, attended by furprife.

In general, that ftability of the power of the Englifh Crown we have defcribed, cannot be the refult of that kind of ftrength which arifes from an armed force: the kind of ftrength which is conferred by fuch a weapon as an army, is too uncertain, too complicate, too liable to accidents: in a word, it falls infinitely fhort of that degree of fteadinefs which is neceffary to counterbalance, and at laft quiet, thofe extenfive agitations in the People which fometimes feem to threaten the deftruction of Order and Government. An army, if its fupport be well directed, may be ufeful to prevent this reftleffnefs in the People from beginning to exift; but it cannot keep it within bounds, when it has once taken place.

If from general arguments and confiderations, we pafs to particular facts, we fhall actually find that the Crown, in England, does

not rely for its ſupport, nor ever has relied, upon the army of which it has the command. From the earlieſt times, that is, long before the invention of ſtanding armies among European Princes, the Kings of England poſſeſſed an authority certainly as full and extenſive as that which they do now enjoy. After the weight they derived from their poſſeſſions beyond ſea had been loſt, a certain arrangement of things began to be formed at home, which ſupplied them with a ſtrength of another kind, though not leſs ſolid: and they began to derive from the Civil branch of their regal Office that ſecure power which no other Monarchs had ever poſſeſſed, except through the aſſiſtance of Legions and Prætorian guards, or of armies of Janiſſaries, or of Strelitzes.

The Princes of the Houſe of Tudor, to ſpeak of a very remarkable period in the Engliſh Hiſtory, though they had no other viſible preſent force than inconſiderable retinues of ſervants, were able to exert a power equal to that of the moſt abſolute Monarchs who ever did reign, equal to that of the Domitians or Commoduſes, or of the Amuraths or Bajazets; nay, it even was ſuperior, if we conſider the ſlow ſteadineſs and outward ſhow of legality with which it was attended throughout.

The ſtand which the Kings of the Houſe of Stuart were able to make, though unarmed, and only ſupported by the civil authority of their Office, during a long courſe of years, againſt the reſtleſs ſpirit which began to actuate the Nation, and the vehement political and religious notions that broke out in their time, is ſtill more remarkable than even the exorbitant power of the Princes of the Houſe of Tudor, during whoſe reign prepoſſeſſions of quite a contrary nature were univerſal.

The ſtruggle opened with the reign of James the Firſt; yet he peaceably weathered the beginning ſtorm, and tranſmitted his authority undiminiſhed to his ſon. Charles the Firſt was indeed at laſt cruſhed under the ruins of the Conſtitution: but if we conſider that, after making the important national conceſſions contained in the *Petition of Right*, he was able, ſingle and unarmed, to maintain his ground without loſs or real danger during a ſpace of eleven years, that is, till the year 1640 and thoſe that followed, we ſhall be inclined to think that, had he been better adviſed, he might have avoided the misfortunes that befel him at length.

Even the events of the reign of James the Second afford a proof of that ſolidity which is

annexed to the authority of the English Crown. Notwithstanding the whole Nation, not excepting the army, were in a manner unanimous against him, he was able to reign full four years, standing single against all, without meeting with any open resistance. Nor was such justifiable and necessary resistance easily brought about at length (*a*). Though it is not to be doubted that the dethroning of James the Second would have been effected in the issue, and perhaps in a very tragical manner, yet, if it had not been for the assistance of the Prince of Orange, the event would certainly have been postponed till a few years later. That authority on which James relied with so much confidence, was not annihilated at the time it was,

(*a*) Mr. Hume is rather too anxious in his wish to exculpate James the Second. He begins the conclusive character he gives of him, with representing him as a Prince *whom we may safely pronounce more unfortunate than criminal.* If we consider the solemn engagements entered into, not by his predecessors only, but by himself, which this Prince endeavoured to break, how cool and deliberate his attack on the liberties and religion of the people was, how unprovoked the attempt, and in short how totally destitute he was of any plea of self-defence or necessity, a plea to which most of the Princes who have been at variance with their Subjects had some sort of more or less distant claim, we shall look upon him as being perhaps the guiltiest Monarch that ever existed.

otherwiſe than by a ready and conſiderable armed force being brought againſt it from the other ſide of the Sea, like a ſolid Fortreſs, which, though without any viſible out-works, requires, in order to be compelled to ſurrender, to be battered with cannon.

If we look into the manner in which this Country has been governed ſince the Revolution, we ſhall evidently ſee that it has not been by means of the army the Crown has under its command, that it has been able to preſerve and exert its authority. It is not by means of their Soldiers that the Kings of Great Britain prevent the manner in which elections are carried on, from being hurtful to them; for theſe Soldiers muſt move from the places of election one day before ſuch elections are begun, and not return till one day after they are finiſhed. It is not by means of their military force that they prevent the ſeveral kinds of civil Magiſtracies in the Kingdom from invading and leſſening their prerogative; for this military force is not to act till called for by theſe latter, and under their direction. It is not by means of their army that they lead the two Branches of the Legiſlature into that reſpect of their regal authority we have before deſcribed; ſince each

of theſe two Branches, ſeverally, is poſſeſſed with an annual power of diſbanding this army (*a*).

There is another circumſtance, which, abſtractedly of all others, makes it evident that the executive authority of the Crown is not ſupported by the army: I mean the very ſingular ſubjection in which the military is kept in regard to the civil power in this Country.

In a Country where the governing authority in the State is ſupported by the army, the military profeſſion, who, in regard to the other profeſſions, have on their ſide the advantage of preſent force, being now moreover countenanced by the law, immediately acquire, or rather aſſume, a general aſcendancy; and the Sovereign, far from wiſhing to diſcourage their claims, feels an inward happineſs in ſeeing that inſtrument on which he reſts his authority, additionally ſtrengthened by the reſpect of the

(*a*) The generality of the People have from early times been ſo little accuſtomed to ſee any diſplay of force uſed to influence the debates of the Parliament, that the attempt made by Charles the Firſt to ſeize the *five Members*, attended by a retinue of about two hundred Servants, was the actual ſpark that ſet in a blaze the heap of combuſtibles which the preceding conteſts had accumulated. The Parliament, from that fact, took a pretence to make military preparations in their turn; and then the Civil war began.

People, and receiving a kind of legal ſanction from the general outward conſent.

And not only the military profeſſion at large, but the individuals belonging to it, alſo claim perſonally a pre-eminence: chief Commanders, Officers, Soldiers or Janiſſaries, all claim, in their own ſpheres, ſome ſort of excluſive privilege: and theſe privileges, whether of an honorific, or of a more ſubſtantial kind, are violently aſſerted, and rendered grievous to the reſt of the Community, in proportion as the aſſiſtance of the military force is more evidently neceſſary to, and more frequently employed by, the Government. Theſe things cannot be otherwiſe.

Now, if we look into the facts that take place in England, we ſhall find that a quite different order prevails from what is above deſcribed. All Courts of a military kind are under a conſtant ſubordination to the ordinary Courts of Law. Officers who have abuſed their private power, though only in regard to their own Soldiers, may be called to account before a Court of Common Law, and compelled to make proper ſatisfaction. Even any flagrant abuſe of authority committed by Members of Courts Martial, when ſitting to judge their own people, and determine upon caſes of a bare mi-

litary kind, makes them liable to the animadverſion of the civil judge (*a*).

(*a*) A great number of inſtances might be produced to prove the above-mentioned ſubjection of the Civil to the Military power. I ſhall introduce one which is particularly remarkable: I meet with it in the periodical publications of the year 1746.

A Lieutenant of Marines, whoſe name was *Frye*, had been charged, while in the Weſt Indies, with contempt of orders, for having refuſed, when ordered by the Captain, to aſſiſt another Lieutenant in carrying another Officer priſoner on board the Ship: the two Lieutenants wanted to have the Captain give the order in writing. For this Lieutenant *Frye* was tried at Jamaica by a Court Martial, and ſentenced to fifteen years impriſonment, beſides being declared incapable of ſerving the King. He was brought home; and his caſe, after being laid before the Privy Council, appearing in a juſtifiable light, he was releaſed. Some time after he brought an action againſt Sir *Chaloner Ogle*, who had ſat as Preſident to the above Court Martial, and had a verdict in his favour for one thouſand pounds damages (it was alſo proved that he had been kept fourteen months in the moſt ſevere confinement before he was brought to his Trial). The Judge moreover informed him, that he was at liberty to bring his action againſt any of the Members of the ſaid Court Martial he could meet with. The following part of the affair is ſtill more remarkable.

Upon application made by Lieutenant *Frye*, Sir *John Willes*, Lord Chief Juſtice of the Common Pleas, iſſued his Writ againſt Admiral *Mayne*, and Captain *Rentone*, two of the Perſons who had ſat in the above Court Martial, who happened to be at that time in England, and were Members of the Court Martial that was then ſitting at Dept-

To the above facts concerning the pre-eminence of the Civil over the Military Power at large, it is needlefs to add, that all offences com-

ford, to determine on the affair between Admirals Matthews and Leftock, of which Admiral *Mayne* was moreover Prefident; and they were arrefted immediately after the breaking up of the Court. The other Members refented highly what they thought the infult; they met twice on the fubject; and came to certain *Refolutions*, which the Judge Advocate was directed to deliver to the Board of Admiralty, in order to their being laid before the King. In thefe refolutions they demanded "fatisfaction for the high infult on "their Prefident, from all perfons how high foever in office, "who have fet on foot this arreft, or in any degree advifed "or promoted it:"—moreover complaining, that, by the faid arreft, "the order, dicipline, and government of his "Majefty's armies by Sea was diffolved, and the Statute "13 Car. II. made null and void."

The altercations on that account lafted fome months. At length the Court Martial thought it neceffary to fubmit; and they fent to Lord Chief Juftice Willes, a letter figned by the feventeen Officers, Admirals and Commanders, who compofed it, in which they acknowledged that "*the* "*refolutions of the* 16 *and* 21 *May were unjuft and un-* "*warrantable, and do afk pardon of his Lordfhip and the* "*whole Court of Common Pleas, for the indignity offered to* "*him and the Court.*"

This letter Judge Willes read in the open Court, and directed the fame to be regiftered in the *Remembrance* Office, "as a memorial *to the prefent and future ages, that whoever* "*fet themfelves above the Law, will, in the end, find themfelves* "*miftaken.*" The letter from the Court Martial, together with Judge Willes's acceptation, were inferted in the next Gazette, 15th November 1746.

mitted by persons of the military profession, in regard to individuals belonging to the other classes of the People, are to be determined upon by the Civil Judge. Any use they may make of their force, unless expressly applied to, and directed by, the Civil Magistrate, let the occasion be what it may, makes them liable to be convicted of murder for any life that may have been lost. Pleading the duties or customs of their profession in extenuation of any offence, is a plea which the Judge will not so much as understand. Whenever claimed by the Civil power, they must be delivered up immediately. Nor can it, in general, be said, that the countenance shewn to the military profession by the Ruling power in the State, has constantly been such as to inspire the bulk of the People with a disposition tamely to bear their acts of oppression, or to raise in Magistrates and Juries any degree of prepossession sufficient to lead them always to determine with partiality in their favour (*a*).

(*a*) The Reader may see in the publications of the year 1770, the clamour that was raised on account of a General in the army (Gen. Gansell) having availed himself of the vicinity of his Soldiers to prevent certain Sheriff's Officers from executing an arrest upon his person, at Whitehall. It however appeared that the General had done nothing more than put forth a few of his Men in order to perplex

The ſubjection of the Military to the Civil power, carried to that extent it is in England, is another characteriſtic and diſtinctive circumſtance in the Engliſh Government.

It is ſufficiently evident that a King does not look to his army for his ſupport, who takes ſo little pains to bribe and unite it to his intereſt.

In general, if we conſider all the different circumſtances in the Engliſh Government, we ſhall find that the army cannot poſſibly procure to the Sovereign any permanent ſtrength, any ſtrength upon which he can rely, and from it expect the ſucceſs of any future and diſtant meaſures.

The public notoriety of the Debates in Parliament, induces all individuals, Soldiers as well as others, to pay ſome attention to political ſubjects: and the liberty of ſpeaking, printing, and intriguing, being extended to every order of the Nation by whom they are ſurrounded, makes them liable to imbibe every

and aſtoniſh the Sheriff's Officers; and in the mean time he took an opportunity for himſelf to ſlip out of the way. The violent clamour we mention was no doubt owing to the party ſpirit of the time; but it nevertheleſs ſhews what the notions of the bulk of the People were on the ſubject.

notion that may be directly contrary to the views of that power which keeps them.

The caſe would be ſtill worſe if the Sovereign was engaged in a conteſt with a very numerous part of the Nation. The general concern would increaſe in proportion to the vehemence of the Parliamentary Debates: Individuals, in all the different claſſes of the Public, would try their eloquence on the ſame ſubjects; and this eloquence would be in great meaſure exerted, during ſuch intereſting times, in making converts of the Soldiery: theſe evils the Sovereign could not obviate, nor even know, till it ſhould be in every reſpect too late. A Prince engaged in the conteſt we ſuppoſe, would ſcarcely have completed his firſt preparations, —his project would ſcarcely be half ripe for execution, before his army would be taken from him. And the more powerful this army might be, the more adequate, ſeemingly, from its numbers, to the taſk it is intended for, the more open it would be to the danger we mention.

Of this, James the Second made a very remarkable experiment. He had augmented his army to the number of thirty thouſand. But when the day finally came in which their ſupport was to have been uſeful to him, ſome deſerted to the enemy; others threw down their arms;

and thoſe who continued to ſtand together, ſhewed more inclination to be ſpectators of, than agents in, the conteſt. In ſhort, he gave all over for loſt, without making any manner of trial of their aſſiſtance (*a*).

(*a*) The army made loud rejoicings on the day of the *acquittal of the Biſhops*, even in the preſence of the King, who had purpoſely repaired to Hounſlow Heath on that day. He had not been able to bring a ſingle regiment to declare an approbation of his meaſures in regard to the Teſt and Penal Statutes. The celebrated ballad, *lero lero lillibulero*, which is reported to have had ſuch an influence on the minds of the People at that time, and of which Biſhop Burnet ſays, "*never perhaps ſo ſlight a thing had ſo* "*great an effect*," originated in the army: "*the whole army,* "*and at laſt People both in City and Country, were perpetually* "*ſinging it.*"

To a King of England engaged in a project againſt public liberty, a numerous army, ready formed before hand, muſt, in the preſent ſituation of things, prove a very great impediment; he cannot poſſibly give his attention to the proper management of it: the leſs ſo, as his meaſures for that purpoſe muſt often be contradictory to thoſe he is to purſue with the reſt of the People.

If a King of England, wiſhing to ſet aſide the preſent Conſtitution, and to aſſimilate his power to that of the other Sovereigns of Europe, was to do me the honour to conſult me as to the means of obtaining ſucceſs, I would recommend to him, as his firſt preparatory ſtep, and before his real project is even ſuſpected, to diſband his army, keeping only a ſtrong guard, not exceeding twelve hundred men. This done, he might, by means of the weight and

From all the facts before introduced, it is evident that the power of the Crown, in England, bears upon foundations that are quite peculiar to it, and that its security and strength are obtained by means totally different from those by which the same advantages are so incompletely procured, and so deeply paid for in other Countries.

It is without the assistance of an armed force that the Crown, in England, is able to manifest that fearlessness of particular individuals, or whole classes of them, with which it discharges its legal functions and duties. It is without the assistance of an armed force it is

advantages of his place, set himself about undermining such constitutional laws as he dislikes; using as much temper as he can, that he may have the more time to proceed. And when at length things should be brought to a crisis, then I would advise him to form another army, out of those friends or class of the People whom the turn and incidents of the preceding contests will have linked and riveted to his interest: with this army he might now take his chance: the rest would depend on his generalship; and even in a great measure on his bare reputation in that respect.

This advice to the King of England I suppose: I would, however, conclude with observing to him, that his situation is as advantageous to the full, as that of any King upon earth; and upon the whole, that all the advantages that can possibly arise from the success of his plan, cannot make it worth his while to undertake it.

able to counterbalance the extenſive and unreſtrained freedom of the People, it is able to exert that reſiſting ſtrength which conſtantly keeps increaſing in a ſuperior proportion to the force by which it is oppoſed, that ballaſting power by which, in the midſt of boiſterous winds and gales, it recovers and rights again the Veſſel of the State (*a*).

It is from the Civil branch of its Office the Crown derives that ſtrength by which it ſubdues even the Military power, and keeps it in a ſtate of ſubjection to the Laws, unexampled in any other Country. It is from an happy arrangement of things it derives that uninterrupted ſteadineſs, that indiviſible ſolidity, which procures to the Subject both ſo certain a protection, and ſo extenſive a freedom. It is from the Nation it receives the force with which it

(*a*) There is a number of circumſtances in the Engliſh Government which thoſe perſons who wiſh for ſpeculative meliorations, ſuch as Parliamentary reform, or other changes of a like kind, do not perhaps think of taking into conſideration. If ſo, they are, in their proceedings, in danger of meddling with a number of ſtrings, the exiſtence of which they do not ſuſpect. While they only mean reformation and improvement, they are in danger of removing the *Taliſman* on which the exiſtence of the Fabric depends, or, like King *Niſus*'s daughter, of cutting off the fatal hair with which the fate of the city is connected.

governs the Nation. Its reſources are, accord, and not compulſion,—free action, and not fear, —and it continues to reign through the play, the ſtruggle, of the voluntary paſſions of thoſe who pay obedience to it (*a*).

CHAP. XVIII.

How far the Examples of Nations who have loſt their Liberty, are applicable to England.

EVERY Government, thoſe Writers obſerve who have treated on theſe ſubjects, containing within itſelf the efficient cauſe of its ruin, a cauſe which is eſſentially connected with thoſe very circumſtances that had produced its proſperity; the advantages attending the Engliſh Government cannot therefore, according to theſe Writers, exempt it from that hidden defect which is ſecretly working its ruin; and M. de Monteſquieu, giving his opinion both on the effect and the cauſe, ſays, the Engliſh

(*a*) Many perſons, ſatisfied with ſeeing the elevation and upper parts of a building, think it immaterial to give a look under ground, and notice the foundation. Thoſe Readers therefore who chooſe, may conſider the long Chapter that has juſt been concluded, as a kind of foreign digreſſion, or parentheſis, in the courſe of the Work.

Conſtitution will loſe its liberty, will periſh: "Have not Rome, Lacedæmon, and Carthage, "periſhed? It will periſh when the Legiſlative "power ſhall have become more corrupt than "the Executive."

Though I do by no means pretend that any human eſtabliſhment can eſcape the fate to which we ſee every thing in Nature is ſubject, nor am ſo far prejudiced by the ſenſe I entertain of the great advantages of the Engliſh Government, as to reckon among them that of Eternity; I will however obſerve in general, that as it differs by its ſtructure and reſources from all thoſe with which Hiſtory makes us acquainted, ſo it cannot be ſaid to be liable to the ſame dangers. To judge of the one from the other, is to judge by analogy where no analogy is to be found; and my reſpect for the author I have quoted will not hinder me from ſaying, that his opinion has not the ſame weight with me on this occaſion, that it has on many others.

Having neglected, as indeed all ſyſtematic Writers upon Politics have done, very attentively to inquire into the real foundations of Power, and of Government, among Mankind, the principles he lays down are not always ſo clear, or even ſo juſt, as we might

have expected from a Man of ſo true a genius. When he ſpeaks of England, for inſtance, his obſervations are much too general: and though he had frequent opportunities of converſing with Men who had been perſonally concerned in the public affairs of this Country, and he had been himſelf an eye-witneſs of the operations of the Engliſh Government, yet, when he attempts to deſcribe it, he rather tells us what he conjectured than what he ſaw.

The examples he quotes, and the cauſes of diſſolution which he aſſigns, particularly confirm this obſervation. The Government of Rome, to ſpeak of the one which, having gradually, and as it were of itſelf, fallen to ruin, may afford matter for exact reaſoning, had no relation to that of England. The Roman People were not, in the latter ages of the Commonwealth, a People of Citizens, but of Conquerors. Rome was not a State, but the head of a State. By the immenſity of its conqueſts, it came in time to be in a manner only an acceſſory part of its own Empire. Its power became ſo great, that, after having conferred it, it was at length no longer able to reſume it: and from that moment it became itſelf ſubjected to it, from the ſame reaſon that the Provinces themſelves were ſo.

The fall of Rome, therefore, was an event peculiar to its ſituation; and the change of manners which accelerated this fall, had alſo an effect which it could not have had but in that ſame ſituation. Men who had drawn to themſelves all the riches of the World, could no longer content themſelves with the ſupper of Fabricius, and the cottage of Cincinnatus. The People, who were maſters of all the corn of Sicily and Africa, were no longer obliged to plunder their neighbours of theirs. All poſſible Enemies, beſides, being exterminated, Rome, whoſe power was military, became to be no longer an army; and that was the æra of her corruption; if, indeed, we ought to give that name to what was the inevitable conſequence of the nature of things.

In a word, Rome was deſtined to loſe her Liberty when ſhe loſt her Empire, and ſhe was deſtined to loſe her Empire, whenever ſhe ſhould begin to enjoy it.

But England forms a Society founded upon principles abſolutely different. All liberty, and power, are not accumulated as it were on one point, ſo as to leave, every where elſe, only ſlavery and miſery, conſequently only ſeeds of diviſion and ſecret animoſity. From the one end of the iſland to the other

the ſame laws take place, and the ſame intereſts prevail: the whole Nation, beſides, equally concurs in the formation of the Government: no part, therefore, has cauſe to fear that the other parts will ſuddenly ſupply the neceſſary forces to deſtroy its liberty; and the whole have, of courſe, no occaſion for thoſe ferocious kinds of virtue which are indiſpenſably neceſſary to thoſe who, from the ſituation in which they have brought themſelves, are continually expoſed to ſuch dangers, and, after having invaded every thing, muſt abſtain from every thing.

The ſituation of the People of England, therefore, eſſentially differs from that of the People of Rome. The form of the Engliſh Government does not differ leſs from that of the Roman Republic: and the great advantages it has over the latter for preſerving the liberty of the People from ruin, have been deſcribed at length in the courſe of this Work.

Thus, for inſtance, the total ruin of the Roman Republic was principally brought about by the exorbitant power to which ſeveral of its Citizens were ſucceſſively enabled to riſe. In the latter age of the Commonwealth, thoſe Citizens went ſo far as to divide among themſelves the dominions of the Republic, in much the ſame manner as they might have done lands

of their own. And to them others in a ſhort time ſucceeded, who not only did the ſame, but who even proceeded to that degree of tyrannical inſolence, as to make ceſſions to each other, by expreſs and formal compacts, of the lives of thouſands of their Fellow-citizens. But the great and conſtant authority and weight of the Crown, in England, prevent, in their very beginning, as we have ſeen, all misfortunes of this kind; and the Reader may recollect what has been ſaid before on that ſubject.

At laſt the ruin of the Republic, as every one knows, was completed. One of thoſe powerful Citizens we mention, in proceſs of time found means to exterminate all his competitors: he immediately aſſumed to himſelf the whole power of the State; and eſtabliſhed for ever after an arbitrary Monarchy. But ſuch a ſudden and violent eſtabliſhment of a Monarchical power, with all the fatal conſequences that would reſult from ſuch an event, are calamities which cannot take place in England; that ſame kind of power we ſee, is already in being; it is aſcertained by fixed laws, and eſtabliſhed upon regular and well-known foundations.

Nor is there any great danger that that power may, by means of thoſe legal prero-

gatives it already poſſeſſes, ſuddenly aſſume others, and at laſt openly make itſelf abſolute. The important privilege of granting to the Crown its neceſſary ſupplies, we have before obſerved, is veſted in the Nation: and how extenſive ſoever the prerogatives of a King of England may be, it conſtantly lies in the power of his People either to grant or deny him the means of exerciſing them.

This right poſſeſſed by the People of England, conſtitutes the great difference between them and all the other Nations that live under Monarchical Governments. It likewiſe gives them a great advantage over ſuch as are formed into Republican States, and confers on them a means of influencing the conduct of the Government, not only more effectual, but alſo (which is more in point to the ſubject of this Chapter) incomparably more laſting and ſecure than thoſe reſerved to the People in the States we mention.

In thoſe States, the political rights which uſually fall to the ſhare of the People, are thoſe of voting in general Aſſemblies, either when laws are to be enacted, or Magiſtrates to be elected. But as the advantages ariſing from theſe general rights of giving votes,

are never very clearly aſcertained by the generality of the People, ſo neither are the conſequences attending particular forms or modes of giving theſe votes, generally and completely underſtood. They accordingly never entertain any ſtrong and conſtant preference for one method rather than another; and it hence always proves but too eaſy a thing in Republican States, either by inſidious propoſals made at particular times to the People, or by well-contrived precedents, or other means, firſt to reduce their political privileges to mere ceremonies and forms, and at laſt entirely to aboliſh them.

Thus, in the Roman Republic, the mode which was conſtantly in uſe for about one hundred and fifty years, of dividing the Citizens into *Centuriæ* when they gave their votes, reduced the right of the greater part of them, during that time, to little more than a ſhadow. After the mode of dividing them by Tribes had been introduced by the Tribunes, the bulk of the Citizens indeed were not, when it was uſed, under ſo great a diſadvantage as before; but yet the great privileges exerciſed by the Magiſtrates in all the public aſſemblies, the power they aſſumed of moving the Citizens out of one Tribe into

another, and a number of other circumſtances, continued to render the rights of the Citizens more and more ineffectual; and in fact we do not find that, when thoſe rights were at laſt entirely taken from them, they expreſſed any very great degree of diſcontent.

In Sweden (the former Government of which partook much of the Republican form) the right allotted to the People in the Government, was that of ſending Deputies to the General States of the Kingdom, who were to give their votes on the reſolutions that were to be taken in that Aſſembly. But the privilege of the People of ſending ſuch Deputies was, in the firſt place, greatly diminiſhed by ſeveral eſſential diſadvantages under which theſe Deputies were placed with reſpect to the Body, or *Order*, of the Nobles. The ſame privilege of the People was farther leſſened by their Deputies being deprived of the right of freely laying their different propoſals before the States, for their aſſent or diſſent, and attributing the excluſive right of framing ſuch propoſals, to a private Aſſembly which was called the *Secret Committee*. Again, the right allowed to the Order of the Nobles, of having a number of Members in this Secret Committee, double to that of all the other Or-

ders taken together, rendered the rights of the People ſtill more ineffectual. At the laſt Revolution thoſe rights we mention have been in a manner taken from the People; and they do not ſeem to have made any great efforts to preſerve them (*a*).

But the ſituation of affairs in England is totally different from that which we have juſt deſcribed. The political rights of the People are inſeparably connected with the right of Property—with a right which it is as difficult to invalidate by artifice, as it is dangerous to attack by force, and which we ſee that the moſt arbitrary Kings, in the full career of their power, have never offered to violate without the greateſt precautions. A King of England who would enſlave his People, muſt begin with doing, for his firſt act, what all other Kings reſerve for the laſt; and he cannot attempt to deprive his Subjects of their political privileges, without declaring war againſt the whole Nation at the ſame time, and attacking

(*a*) I might have produced examples of a number of Republican States in which the People have been brought, at one time or other, to ſubmit to the loſs of their political privileges. In the Venetian Republic, for inſtance, the right, now excluſively veſted in a certain number of families, of enacting laws, and electing the Doge and other Magiſtrates, was originally veſted in the whole People.

every individual at once in his moſt permanent and beſt underſtood intereſt.

And that means poſſeſſed by the People of England, of influencing the conduct of the Government, is not only in a manner ſecure againſt any danger of being taken from them: it is moreover attended with another advantage of the greateſt importance; which is that of conferring naturally, and as it were neceſſarily, on thoſe to whom they truſt the care of their intereſts, the great privilege we have before deſcribed, of debating among themſelves whatever queſtions they think conducive to the good of their Conſtituents, and of framing whatever bills they think proper, and in what terms they chooſe.

This privilege of ſtarting new ſubjects for deliberation, and, in ſhort, of *propounding* in the buſineſs of legiſlation, which, in England, is allotted to the Repreſentatives of the People, ſets another capital difference between the Engliſh Conſtitution, and the government of other free States, whether limited Monarchies or Commonwealths, and prevents that which, in thoſe States, proves a moſt effectual means of ſubverting the laws favourable to public liberty: I mean the undermining of theſe laws by the precedents and artful practices of thoſe who are inveſted with the Executive Power in the Government.

In the States we mention, the *active* ſhare, or the buſineſs of *propounding*, in legiſlation, being ever allotted to thoſe perſons who are inveſted with the Executive authority, they not only poſ-ſeſs a general power, by means of inſidious and well-timed propoſals made to the People, of getting thoſe laws repealed which ſet bounds to their authority; but when they do not chooſe openly to diſcover their wiſhes in that reſpect, or perhaps even fear to fail in the attempt, they have another reſource, which, though ſlower in its operation, is not leſs effectual in the iſſue. They neglect to execute thoſe laws which they diſlike, or deny the benefit of them to the ſe-parate ſtraggling individuals who claim them, and in ſhort introduce practices that are directly derogatory to them. Theſe practices in a courſe of time become reſpectable *Uſes*, and at length obtain the force of *Laws*.

The People, even where they are allowed a ſhare in legiſlation, being ever *paſſive* in the ex-erciſe of it, have no opportunities of framing new proviſions by which to remove theſe ſpuri-ous practices or regulations, and declare what the law in reality is. The only reſource of the Citizens, in ſuch a ſtate of things, is either to be perpetually cavilling, or openly to oppoſe: and always exerting themſelves, either too ſoon,

or too late, they cannot come forth to defend their liberty, without incurring the charge, either of disaffection, or of rebellion.

And while the whole class of politicians, who are constantly alluding to the usual forms of limited Governments, agree in deciding that freedom, when once lost, cannot be recovered (*a*), it happens that the maxim, *principiis obsta*, which they look upon as the safeguard of liberty, and which they accordingly never cease to recommend, besides its requiring a degree of watchfulness incompatible with the situation of the People, is in a manner impracticable.

But the operation of preferring grievances, which in other Governments is a constant forerunner of public commotions, and that of framing new law remedies, which is so jealously secured to the Ruling power of the State, are, in England, the constitutional and appropriated offices of the Representatives of the People.

How long soever the People may have remained in a state of supineness as to their most valuable interests, whatever may have been the neglect and even the errors of their Representatives, the instant the latter come either to see these errors, or to have a sense of their

(*a*) "Ye free Nations, remember this maxim: Freedom "may be acquired, but cannot be recovered." *Rousseau's* Social Compact, Chap. VIII.

duty, they proceed, by means of the privilege we mention, to ſet aſide thoſe abuſes or practices which, during the preceding years, had become to hold the place of the laws. To how low ſoever an eſtate public liberty may happen to be reduced, they take it where they find it, lead it back through the ſame path, and to the ſame point, from which it had been compelled to retreat; and the ruling power, whatever its uſurpations may have been, how far ſoever it may have overflowed its banks, is ever brought back to its old limits.

To the exertions of the privilege we mention, were owing the frequent confirmations and elucidations of the Great Charter that took place in different reigns. By means of the ſame privilege the Act was repealed, without public commotion, which had enacted that the King's proclamation ſhould have the force of law: by this Act public liberty ſeemed to be irretrievably loſt; and the Parliament who paſſed it, ſeemed to have done what the Daniſh Nation did about a century afterwards. The ſame privilege procured the peaceable abolition of the Court of Star Chamber: a Court which, though in itſelf illegal, had grown to be ſo reſpected through the length of time it had been ſuffered to exiſt, that it ſeemed to have for ever

fixed and rivetted the unlawful authority it conferred on the Crown. By the ſame means the power was ſet aſide which the Privy Council had aſſumed, of impriſoning the Subject without admitting to bail, and even mentioning any cauſe: this power was in the firſt inſtance declared illegal by the *Petition of Right*; and the attempts of both the Crown and the Judges to invalidate this declaration by introducing, or maintaining, practices that were derogatory to it, were as often obviated, in a peaceable manner, by freſh declarations, and, in the end, by the celebrated *Habeas Corpus* Act (*a*).

(*a*) The caſe of the General Warrants may alſo be mentioned as an inſtance. The iſſuing of ſuch Warrants, with the name of the perſon to be arreſted left blank, was a practice that had been followed in the Secretaries of State's office for above ſixty years. In a Government differently conſtituted, that is, in a Government in which the Magiſtrates, or Executive Power, ſhould have been poſſeſſed of the *Key* of Legiſlation, it is difficult to ſay how the conteſt might have been terminated: theſe Magiſtrates would have been but indifferently inclined to frame and bring forth a declaration by which to abridge their aſſumed authority. In the Republic of Geneva, the Magiſtracy, inſtead of reſcinding the judgment againſt M. Rouſſeau, of which the Citizens complained, choſe rather openly to avow the maxim, that ſtanding *Uſes* were valid derogations to the written Law, and ought to ſuperſede it. This rendered the clamour more violent than before.

And I ſhall take this opportunity to make the Reader obſerve, in general, how the different parts of the Engliſh Government mutually aſſiſt and ſupport each other. It is becauſe the whole executive authority in the State is veſted in the Crown, that the People may without danger delegate the care of their liberty to Repreſentatives:—it is becauſe they ſhare in the Government only through theſe Repreſentatives, that they are enabled to poſſeſs the great advantage ariſing from framing and propoſing new laws: but for this purpoſe, it is again abſolutely neceſſary that the *Crown*, that is to ſay, a *Veto* of extraordinary power, ſhould exiſt in the State.

It is, on the other hand, becauſe the balance of the People is placed in the right of granting to the Crown its neceſſary ſupplies, that the latter may, without danger, be intruſted with the great authority we mention; and that the right, for inſtance, which is veſted in it of judging of the proper time for calling and diſſolving Parliaments (a right abſolutely neceſſary to its preſervation) may exiſt without producing, *ipſo facto*, the ruin of public Liberty. The moſt ſingular Government upon Earth, and which has carried fartheſt the liberty of the in-

dividual, was in danger of total deſtruction, when Bartholomew Columbus was on his paſſage to England, to teach Henry the Seventh the way to Mexico and Peru (*a*).

As a concluſion of this ſubject (which might open a field for ſpeculations without end), I ſhall take notice of an advantage peculiar to the Engliſh Government, and which, more than any other we could mention, muſt contribute to its duration. All the political paſſions of Mankind, if we attend to it, are ſatiſfied and provided for in the Engliſh Government; and whether we look at the Monarchical, or the Ariſtocratical, or the Democratical part of it, we find all thoſe powers already ſettled in it in a regular manner, which have an unavoidable tendency to ariſe at one time or other in all human Societies.

If we could for an inſtant ſuppoſe that the Engliſh form of Government, inſtead of having been the effect of a lucky concurrence of fortunate circumſtances, had been eſtabliſhed from a ſettled plan by a Man who had diſcovered, beforehand and by reaſoning, all thoſe

(*a*) As affairs are ſituated in England, the diſſolution of a Parliament on the part of the Crown, is no more than an appeal either to the People themſelves, or to another Parliament.

advantages resulting from it which we now perceive from experience, and had undertaken to point them out to other men capable of judging of what he said to them, the following is, most likely, the manner in which he would have expressed himself.

'Nothing is more chimerical, he would have 'said, than a state either of total equality, or 'total liberty, amongst Mankind. In all so'cieties of Men, some Power will necessarily 'arise. This Power, after gradually becoming 'confined to a smaller number of persons, will, 'by a like necessity, at last fall into the hands 'of a single Leader: and these two effects (of 'which you may see constant examples in His'tory) arising from the ambition of the one 'part of Mankind, and from the various affec'tions and passions of the other, are absolutely 'unavoidable.

'Let us, therefore, admit this evil at once, 'since it is impossible to avoid it. Let us, of 'ourselves, establish a Chief among us, since 'we must, some time or other, submit to one: 'we shall by this means effectually prevent 'the conflicts that would arise among the 'competitors for that station. But let us, 'above all, establish him single; lest, after 'successively raising himself on the ruins of

'his Rivals, he ſhould finally eſtabliſh himſelf 'whether we will or not, and through a train 'of the moſt diſadvantageous incidents.

'Let us even give him every thing we can 'poſſibly give without endangering our ſe-'curity. Let us call him our Sovereign; let 'us make him conſider the State as being his 'own patrimony; let us grant him, in ſhort, 'ſuch perſonal privileges as none of us can 'ever hope to rival him in, and we ſhall find 'thoſe things which we were at firſt inclined 'to conſider as a great evil, will be in reality 'a ſource of advantages to the Community. 'We ſhall be the better able to ſet bounds 'to that Power which we ſhall have thus aſcer-'tained and fixed in one place. We ſhall have 'the more intereſted the Man whom we ſhall 'have put in poſſeſſion of ſo many advantages, 'in the faithful diſcharge of his duty. And 'we ſhall have thus procured for each of us, 'a powerful protector at home, and for the 'whole Community, a defender againſt foreign 'enemies, ſuperior to all poſſible temptation of 'betraying his Country.

'You may alſo have obſerved (he would 'continue), that in all States, there naturally 'ariſes around the perſon, or perſons, who are 'inveſted with the public power, a claſs of

'Men, who, without having any actual ſhare 'in that power, yet partake of its luſtre: who, 'pretending to be diſtinguiſhed from the reſt 'of the Community, do, from that very circum-'ſtance, become diſtinguiſhed from it; and 'this diſtinction, though only matter of opinion, 'and at firſt thus ſurreptitiouſly obtained, yet 'may become in time the ſource of very griev-'ous effects.

'Let us therefore regulate this evil which 'we cannot entirely prevent. Let us eſtabliſh 'this claſs of Men who would otherwiſe grow 'up among us without our knowledge, and 'gradually acquire the moſt pernicious privi-'leges. Let us grant them diſtinctions that are 'viſible and clearly aſcertained: their nature 'will, by this means, be the better underſtood, 'and they will of courſe be much leſs likely 'to become dangerous. By this means, alſo, 'we ſhall preclude all other perſons from the 'hopes of uſurping them. As to pretend to 'diſtinctions can thenceforward be no longer 'a title to obtain them, every one who ſhall 'not be expreſsly included in their number, 'muſt continue to confeſs himſelf one of the 'People; and juſt as we ſaid before, let us 'chooſe ourſelves one Maſter that we may not 'have fifty, ſo let us again ſay here, let us

'eſtabliſh three hundred Lords, that we may 'not have ten thouſand Nobles.

'Beſides, our pride will better reconcile 'itſelf to a ſuperiority which it will no longer 'think of diſputing. Nay, as they will them-'ſelves ſee us to be beforehand in acknow-'ledging it, they will think themſelves under 'no neceſſity of being inſolent to furniſh us a 'proof of it. Secure as to their privileges, all 'violent meaſures on their part for maintain-'ing, and at laſt perhaps extending them, will 'be prevented: they will never combine to-'gether with any degree of vehemence, but 'when they really have cauſe to think them-'ſelves in danger; and by having made them 'indiſputably great Men, we ſhall have a chance 'of often ſeeing them behave like modeſt and 'virtuous Citizens.

'In fine, by being united in a regular Aſ-'ſembly, they will form an intermediate Body 'in the State, that is to ſay, a very uſeful part 'of the Government.

'It is alſo neceſſary, our Lawgiver would 'farther add, that We, the People, ſhould 'have an influence upon Government: it is 'neceſſary for our own ſecurity; it is no 'leſs neceſſary for the ſecurity of the Govern-'ment itſelf. But experience muſt have taught

'you, at the ſame time, that a great body of 'Men cannot act, without being, though they 'are not aware of it, the inſtruments of the 'deſigns of a ſmall number of perſons; and 'that the power of the People is never any 'thing but the power of a few Leaders, who '(though it may be impoſſible to tell when or 'how) have found means to ſecure to them-'ſelves the direction of its exerciſe.

'Let us, therefore, be alſo beforehand 'with this other inconvenience. Let us effect 'openly what would, otherwiſe, take place 'in ſecret. Let us intruſt our power, before 'it be taken from us by addreſs. Thoſe whom 'we ſhall have expreſsly made the depoſitaries 'of it, being freed from any anxious care 'about ſupporting themſelves, will have no 'object but to render it uſeful. They will 'ſtand in awe of us the more, becauſe they 'will know that they have not impoſed upon 'us: and inſtead of a ſmall number of Leaders, 'who would imagine they derive their whole 'importance from their own dexterity, we ſhall 'have expreſs and acknowledged Repreſenta-'tives, who will be accountable to us, for the 'evils of the State.

'But above all, by forming our Govern-'ment with a ſmall number of perſons, we ſhall

'prevent any diſorder that may take place in
'it, from ever becoming dangerouſly extenſive.
'Nay more, we ſhall render it capable of in-
'eſtimable combinations and reſources, which
'would be utterly impoſſible in that Govern-
'ment of all, which never can be any thing
'but uproar and confuſion.

'In ſhort, by expreſsly diveſting ourſelves
'of a power of which we ſhould, at beſt,
'have only an apparent enjoyment, we ſhall
'be intitled to make conditions for ourſelves:
'we will inſiſt that our liberty be augmented;
'we will, above all, reſerve to ourſelves the
'right of watching and cenſuring that admi-
'niſtration which will have been eſtabliſhed
'by our own conſent. We ſhall the better
'ſee its faults, becauſe we ſhall be only Specta-
'tors of it; we ſhall correct them the better,
'becauſe we ſhall not have perſonally concurred
'in its operations (*a*).'

(*a*) He might have added,—"As we will not ſeek to
"counteract nature, but rather to follow it, we ſhall be
"able to procure ourſelves a mild Legiſlation. Let us not
"be without cauſe afraid of the power of one Man; we
"ſhall have no need either of a Tarpeian rock, or of a
"Council of *Ten*. Having expreſsly allowed to the Peo-
"ple a liberty to inquire into the conduct of Govern-
"ment, and to endeavour to correct it, we ſhall need neither
"State-priſons, nor ſecret Informers."

The English Constitution being founded upon such principles as those we have just described, no true comparison can be made between it, and the Governments of any other States: and since it evidently assures, not only the liberty, but the general satisfaction in all respects, of those who are subject to it, in a much greater degree than any other Government ever did, this consideration alone affords sufficient ground to conclude, without looking further, that it is also more likely to be preserved from ruin.

And indeed we may observe the remarkable manner in which it has been maintained in the midst of such general commotions as seemed unavoidably to prepare its destruction. It rose again, we see, after the wars between Henry the Third and his Barons; after the usurpation of Henry the Fourth; and after the long and bloody contentions between the Houses of York and Lancaster. Nay, though totally destroyed in appearance after the fall of Charles the First, and though the greatest efforts had been made to establish another form of government in its stead, yet, no sooner was Charles the Second called over, than the Constitution was re-established upon all its ancient foundations.

However, as what has not happened at one time may happen at another, future Revolutions (events which no form of Government can totally prevent) may perhaps end in a different manner from that in which paſt ones have been terminated. New combinations may poſſibly take place among the then ruling Powers of the State, of ſuch a nature as to prevent the Conſtitution, when peace ſhall be reſtored to the Nation, from ſettling again upon its ancient and genuine foundations; and it would certainly be a very bold aſſertion to decide, that both the outward form, and the true ſpirit of the Engliſh Government, would again be preſerved from deſtruction, if the ſame dangers to which they have in former times been expoſed, ſhould again happen to take place.

Nay, ſuch fatal changes as thoſe we mention may be introduced even in quiet times, or, at leaſt, by means in appearance peaceable and conſtitutional. Advantages, for inſtance, may be taken by particular factions, either of the feeble temper, or of the miſconduct, of ſome future King. Temporary prepoſſeſſions of the People may be made uſe of, to make them concur in doing what will prove afterwards the ruin of their own liberty. Plans of apparent

improvement in the Conſtitution, forwarded by Men who, though with good intentions, ſhall proceed without a due knowledge of the true principles and foundations of Government, may produce effects quite contrary to thoſe which were deſigned, and in reality prepare its ruin (*a*). The Crown, on the other hand, may, by the acquiſition of foreign dominions, acquire a fatal independency on the People; and if, without entering into any farther particulars on this ſubject, I were re-

(*a*) Inſtead of looking for the principles of Politics in their true ſources, that is to ſay, in the nature of the affections of Mankind, and of thoſe ſecret ties by which they are united together in a ſtate of Society, Men have treated that ſcience in the ſame manner as they did natural Philoſophy in the times of Ariſtotle, continually recurring to occult cauſes, and principles, from which no uſeful conſequence could be drawn. Thus, in order to ground particular aſſertions, they have much uſed the word Conſtitution, in a perſonal ſenſe, *the Conſtitution loves*, *the Conſtitution forbids*, and the like. At other times they have had recourſe to *Luxury*, in order to explain certain events; and at others, to a ſtill more occult cauſe, which they have called *Corruption*; and abundance of compariſons drawn from the human Body, have been alſo uſed for the ſame purpoſes: continued inſtances of ſuch defective arguments and conſiderations occur in the Works of M. *de Monteſquieu*; though a man of ſo much genius, and from whoſe writings ſo much information is nevertheleſs to be derived. Nor is it only the obſcurity of

quired to point out the principal events which would, if they were ever to happen, prove immediately the ruin of the English Government, I would ſay,—The Engliſh Government will be no more, either when the Crown ſhall become independent on the Nation for its ſupplies, or when the Repreſentatives of the People ſhall begin to ſhare in the Executive authority (*a*).

CHAP. XIX.

A few additional thoughts on the attempts that at particular times may be made to abridge the power of the Crown, and ſome of the dangers by which ſuch attempts may be attended.

THE power of the Crown is ſupported by deeper, and more numerous, roots, than the generality of people are aware of, as has

the writings of Politicians, and the impoſſibility of applying their ſpeculative Doctrines to practical uſes, which prove that ſome peculiar and uncommon difficulties lie in the way of the inveſtigation of political truths; but the remarkable perplexity which Men in general, even the ableſt, labour under, when they attempt to deſcant and argue upon abſtract queſtions in politics, alſo juſtifies this obſervation, and proves that the true firſt principles of this Science, whatever they are, lie deep both in the human feelings, and underſtanding.

(*a*) And if, at any time, any dangerous changes were to take place in the Engliſh Conſtitution, the pernicious

been obferved in a former Chapter; and there is no caufe anxioufly to fear that the wrefting any capital branch of its prerogative, may be effected, in common peaceable times, by the mere theoretical fpeculations of Politicians. However, it is not equally impracticable that fome event of the kind we mention may be brought about through a conjunction of feveral circumftances. Advantage may, in the firft place, be taken of the minority, or even alfo the inexperience or the errors, of the perfon invefted with the kingly authority. Of this a remarkable inftance happened under the reign of King George the Firft, while that bill, by which the number of Peers was in future to be limited to a certain number, was under confideration in the Houfe of Commons, to whom it had been fent from that of the Lords, where it had been paffed. So unacquainted was the King at that time with his own intereft, and with the conftitution of that Government over which he was come to prefide, that, having been perfuaded by that party who wifhed fuccefs to the Bill, that the objection made againft it by the Houfe of Commons, was only owing to an

tendency of which the People were not able at firft to difcover, reftrictions on the Liberty of the Prefs, and on the Power of Juries, will give them the firft information.

opinion they entertained of the Bill being diſagreeable to him, he was prevailed upon to ſend a meſſage to them, to let them know that ſuch an opinion was ill-grounded, and that ſhould the Bill paſs in their Houſe, it would meet with his aſſent (*a*). Conſidering the prodigious importance of the conſequences of ſuch a Bill, the fact is certainly very remarkable (*b*).

With thoſe perſonal diſadvantages under which the Sovereign may lie for defending his authority, other cauſes of difficulty may concur:—ſuch as popular diſcontents of long continuance in regard to certain particular abuſes of influence or authority. The generality of the Public, bent, at that time, both upon remedying the abuſes that are complained of, and preventing the like from taking place in future, will perhaps wiſh to ſee that branch of the prerogative which gave riſe to them, taken from the Crown: a general diſpoſition to applaud ſuch a meaſure, if effected, will be manifeſted from all quarters; and at the ſame time Men may not be aware that the only material conſequence that may ariſe from depriving the Crown of that branch of power

(*a*) See the Collection of *Parliamentary Debates;* I do not remember exactly what Volume.

(*b*) This Bill has been mentioned in page 398.

which has caufed the public complaints, will perhaps be the having tranfpofed that branch of power from its former feat to another, and having trufted it to new hands, which will be ftill more likely to abufe it than thofe in which it was formerly lodged.

In general, it may be laid down as a maxim, that Power, under any form of Government, muft exift and be trufted fomewhere. If the Conftitution does not admit of a King, the governing authority is lodged in the hands of Magiftrates. If the Government, at the fame time it is a limited one, bears a Monarchical form, thofe fhares of power that are retrenched from the King's prerogative, moft likely continue to fubfift, and are vefted in a Senate, or Affembly of great Men, under fome other name of the like kind.

Thus, in the Kingdom of Sweden, which, having been a limited Monarchy, may fupply examples very applicable to the Government of this Country, we find that the power of convoking the General States (or Parliament) of that Kingdom, had been taken from the Crown; but at the fame time we alfo find that the Swedifh Senators had invefted themfelves with that effential branch of power which the Crown had loft.—I mean here to fpeak of the Govern-

ment of Sweden as it ſtood before the laſt revolution.

The power of the Swediſh King to confer offices and employments, had been alſo very much abridged. But what was wanting to the power of the King, the Senate enjoyed: it had the nomination of three perſons for every vacant office, out of whom the King was to chooſe one.

The King of Sweden had but a limited power in regard to pardoning offenders; but the Senate likewiſe poſſeſſed what was wanting to that branch of its prerogative; and it appointed two perſons, without the conſent of whom the King could not remit the puniſhment of any offence.

The King of England has an excluſive power in regard to foreign affairs, war, peace, treaties;—in all that relates to military affairs; he has the diſpoſal of the exiſting army, of the fleet, &c. The King of Sweden had no ſuch extenſive powers; but they nevertheleſs exiſted; every thing relating to the above-mentioned objects was tranſacted in the Aſſembly of the Senate; the majority decided; the King was obliged to ſubmit to it; and his only privilege conſiſted in his vote being accounted two (*a*).

(*a*) The Swediſh Senate was uſually compoſed of ſixteen Members. In regard to affairs of ſmaller moment,

If we pursue farther our inquiry on the subject, we shall find that the King of Sweden could not raise whom he pleased to the office of Senator, as the King of England can, in regard to the office of member of the Privy Council; but the Swedish States, in the Assembly of whom the Nobility enjoyed most capital advantages, possessed a share of the power we mention, in conjunction with the King; and in cases of vacancies in the Senate, they elected

they formed themselves into two divisions: in either of these, when they did sit, the presence of seven Members was required for the effectual transacting of business: in affairs of importance, the Assembly was formed of the whole Senate; and the presence of ten Members was required to give force to the resolutions. When the King could not, or would not, take his seat, the Senate proceeded nevertheless, and the majority continued to be equally decisive.

As the Royal Seal was necessary for putting in execution the resolutions of the Senate, King Adolphus Frederic, father to the present King, tried, by refusing to lend the same, to procure that power which he had not by his suffrage, and to stop the proceedings of the Senate. Great debates, in consequence of that pretension, arose, and continued for a while; but, at last, in the year 1756, the King was over-ruled by the Senate, who ordered a seal to be made, that was named the *King's Seal*, which they affixed to their official resolutions, when the King refused to lend his own.

three persons, out of whom the King was to return one.

The King of England may, at all times, deprive his Ministers of their employments. The King of Sweden could remove no Man from his office ; but the States enjoyed the power that had been denied to the King; and they might deprive of their places both the Senators, and those persons in general who had a share in the Administration.

The King of England has the power of dissolving, or keeping assembled as long as he pleases, his Parliament. The King of Sweden had not that Power ; but the State might, of themselves, prolong their duration as they thought proper.

Those persons who think that the prerogative of a King cannot be too much abridged, and that power loses all its influence on the dispositions and views of those who possess it, according to the kind of name used to express those offices by which it is conferred, may be satisfied, no doubt, to behold those branches of power that were taken from a King, distributed to several bodies, and shared in by the Representatives of the People : but those who think that Power, when parcelled and diffused, is never so well repressed and regulated as

when it is confined to a ſole indiviſible ſeat, that keeps the Nation united and awake,—thoſe who know that, names by no means altering the intrinſic nature of things, the Repreſentatives of the People, as ſoon as they are veſted with independent authority, become *ipſo facto* its Maſters,—thoſe perſons, I ſay, will not think it a very happy regulation in the former Conſtitution of Sweden, to have deprived the King of prerogatives formerly attached to his office, in order to veſt the ſame either in a Senate, or in the Deputies of the People, and thus to have truſted with a ſhare in the exerciſe of the public power, thoſe very Men whoſe Conſtitutional office ſhould have been to watch and reſtrain it.

To the indiviſibility of the governing authority in England, the community of intereſt which takes place among all orders of Men, is owing; and from this community of intereſt riſes, as a neceſſary conſequence, the liberty enjoyed by all ranks of ſubjects. This obſervation has been inſiſted upon at length in the courſe of this Work. The ſhorteſt reflection on the frame of the human heart ſuffices to convince us of its truth, and at the ſame time manifeſts the danger that would reſult from making any changes in the form of the exiſting Go-

vernment by which this general community of interest might be lessened,—unless we are at the same time also determined to believe, that partial Nature forms Men in this Island, of quite other stuff than the selfish and ambitious one of which she ever made them in other Countries (*a*).

(*a*) Such regulations as may capitally affect, through their consequences, the equipoise of a Government, may be brought about, even though the promoters themselves of those regulations are not aware of their tendency. At the same time the bill was passed in the last century, by which it was enacted that the Crown should give up its prerogative of dissolving the Parliament then sitting, the generality of People had no thought of the calamitous consequences that were to follow: very far from it. The King himself certainly felt no very great apprehension on that account; else he would not have given his assent: and the Commons themselves, it appears, had but very faint notions of the capital changes which the Bill would speedily effect in their political situation.

When the Crown of Sweden was, in the first instance, stripped of all the different prerogatives we have mentioned, it does not appear that those measures were effected by sudden, open provisions for that purpose: it is very probable they had been prepared by indirect regulations formerly made, the whole tendency of which scarcely any body perhaps could foresee at the time they were framed.

When the Bill was in agitation, that has been mentioned in pages 398 and 499, by which the House of Peers was in future to be limited to a certain number that was

But paſt experience does not by any means allow us to entertain ſo pleaſing an opinion.

not to be exceeded, the great conſtitutional conſequences of the Bill were ſcarcely attended to by any body. The King himſelf certainly ſaw no harm in it, ſince he ſent an open meſſage to promote the paſſing of it: a meaſure which I cannot ſay how far it was in itſelf regular. The Bill was, it appears, generally approved out of doors. Its fate was for a long time doubtful in the Houſe of Commons; nor did they acquire any glory with the bulk of the People by finally rejecting it: and Judge Blackſtone, as I find in his Commentaries, does not ſeem to have thought much of the Bill and its being rejected, as he only obſerves that the Commons "wiſhed to keep the "door of the Houſe of Lords as open as poſſible." Yet, no Bill of greater conſtitutional importance was ever agitated in Parliament; ſince the conſequences of its being paſſed would have been the freeing the Houſe of Lords, both in their Judicial and Legiſlative capacities, from all conſtitutional check whatever, either from the Crown, or the Nation. Nay, it is not to be doubted they would have acquired, in time, the right of electing their own Members: though it would be uſeleſs to point out here by what ſeries of intermediate events the meaſure might have been brought about. Whether there exiſted any actual project of this kind, among the firſt framers of the Bill, does not appear: but a certain number of the Members of the Houſe we mention, would have thought of it ſoon enough, if the Bill in queſtion had been enacted into a law; and they would certainly have met with ſucceſs, had they been but contented to wait, and had they taken time. Other equally important changes in the ſubſtance, and perhaps the outward form, of the Government, would have followed.

The perusal of the History of this Country will shew us, that the care of its Legislators for the welfare of the subject, always kept pace with the exigencies of their own situation. When, through the minority, or easy temper of the reigning Prince, or other circumstances, the dread of a superior power began to be overlooked, the public cause was immediately deserted in a greater or less degree, and pursuit after private influence and lucrative offices took the place of patriotism. When, under the reign of Charles the First, the authority of the Crown was for a while utterly annihilated, those very Men who, till then, had talked of nothing but Magna Charta and Liberty, instantly endeavoured openly to trample both under foot.

Since the time we mention, the former Constitution of the Government having been restored, the great outlines of public liberty have indeed been warmly and seriously defended: but if any partial unjust laws or regulations have been made, especially since the Revolution of the year 1689, if any abuses injurious to particular classes of individuals have been suffered to continue (facts into the truth of which I do not propose to examine here), it will certainly be found upon enquiry, that those laws and those abuses were such as that from

them the Members of the Legiſlature well knew, that neither they, nor their friends, would ever be likely to ſuffer.

If through the unforeſeen operation of ſome new regulation made to reſtrain the royal prerogative, or through ſome ſudden public revolution, any particular bodies or claſſes of individuals were ever to acquire a perſonal independent ſhare in the exerciſe of the governing authority, we ſhould behold the public virtue and patriotiſm of the Legiſlators and Great Men immediately ceaſe with its cauſe, and Ariſtocracy, as it were watchful of the opportunity, burſt out at once, and ſpread itſelf over the Kingdom.

The Men who are now the Miniſters, then the Partners of the Crown, would inſtantly ſet themſelves above the reach of the law, and ſoon after enſure the ſame privilege to their ſeveral ſupporters or dependants.

Perſonal and independent power being become the only kind of ſecurity of which Men would now ſhew themſelves ambitious, the *Habeas Corpus* Act, and in general all thoſe laws which Subjects of every rank mention with love, and to which they look up for protection and ſafety, would be ſpoken of with contempt, and

mentioned as remedies fit only for Countrymen and Cits:—it even would not be long before they were ſet aſide, as obſtructing the wiſe and ſalutary ſteps of the Senate.

The pretenſions of an equality of right in all Subjects, of whatever rank and order, to their property and to perſonal ſafety, would ſoon be looked upon as an old-faſhioned doctrine, which the Judge himſelf would ridicule from the Bench. And the liberty of the preſs, now ſo univerſally and warmly vindicated, would, without loſs of time, be cried down and ſuppreſſed, as only ſerving to keep up the inſolence and pride of a refractory People.

And let us not believe that the miſtaken People, whoſe Repreſentatives we now behold making ſuch a firm ſtand againſt the *indiviſible* power of the Crown, would, amidſt the general devaſtation of every thing they hold dear, eaſily find Men equally diſpoſed to repreſs the encroaching, while *attainable*, power of a Senate and Body of Nobles.

The time would be no more when the People, upon whatever Men they let their choice fall, are ſure to find them ready ſincerely to join in the ſupport of every important branch of public liberty.

Preſent or expected, perſonal power and in-

dependance on the laws being now the consequence of the truſt of the People, wherever they ſhould apply for ſervants, they would only meet with betrayers. Corrupting as it were every thing they ſhould touch, they could confer no favour upon an individual but to deſtroy his public virtue; and to repeat the words uſed in a former Chapter, "their "raiſing a Man would only be immediately "inſpiring him with views directly oppoſite to "their own, and ſending him to increaſe the "number of their enemies."

All theſe conſiderations ſtrongly point out the very great caution which is neceſſary to be uſed in the difficult buſineſs of laying new reſtraints on the governing authority. Let therefore the leſs-informed part of the People, whoſe zeal requires to be kept up by viſible objects, look if they chooſe upon the Crown as the only ſeat of the evils they are expoſed to; miſtaken notions on their part are leſs dangerous than political indifference, and they are more eaſily directed than rouſed,—but at the ſame time, let the more enlightened part of the Nation conſtantly remember, that the Conſtitution only ſubſiſts by virtue of a proper equilibrium,—by a line being drawn between Power and Liberty.

Made wiſe by the examples of ſeveral other Nations, by thoſe which the Hiſtory of this very Country affords, let the People, in the heat of their ſtruggles in the defence of liberty, always take heed, only to reach, never to overſhoot, the mark,—only to repreſs, never to transfer and diffuſe, Power.

Amidſt the alarms that may, at particular times, ariſe from the really awful authority of the Crown, let it, on the one hand, be remembered, that even the power of the Tudors was oppoſed and ſubdued,—and on the other let it be looked upon as a fundamental maxim, that, whenever the proſpect of perſonal power and independance on the governing authority, ſhall offer to the view of the Members of the Legiſlature, or in general of thoſe Men to whom the People muſt truſt, even Hope itſelf is deſtroyed. The Hollander, in the midſt of a ſtorm, though truſting to the experienced ſtrength of the mounds that protect him, ſhudders no doubt at the ſight of the foaming Element that ſurrounds him; but they all gave themſelves over for loſt, when they thought the worm had got into their dykes (*a*).

(*a*) Such new forms as may prove deſtructive of the real ſubſtance of a Government, may be unwarily adopted, in

CHAP. XX.

A few additional Obſervations on the right of Taxation which is lodged in the hands of the Repreſentatives of the People. What kind of danger this Right may be expoſed to.

THE generality of Men, or at leaſt of Politicians, ſeem to conſider the right of taxing themſelves, enjoyed by the Engliſh Nation, as being no more than a means of ſecuring their property againſt the attempts of the Crown; while they overlook the nobler and more extenſive efficiency of that privilege.

The right to grant ſubſidies to the Crown, poſſeſſed by the People of England, is the ſafeguard of all their other liberties, religious and civil: it is a regular means conferred on them by the Conſtitution, of influencing the motion of the Executive power; and it forms the tie by which the latter is bound to them. In ſhort, this privilege is a ſure pledge in their hands, that their Sovereign, who can diſmiſs their Repreſentatives at his pleaſure,

the ſame manner as the ſuperſtitious notions and practices deſcribed in my Work, entitled *Memorials of Human Superſtition*, may be introduced into a Religion, ſo as to entirely ſubvert the true ſpirit of it.

will never entertain thoughts of ruling without the aſſiſtance of theſe.

If, through unforeſeen events, the Crown could attain to be independant on the People in regard to its ſupplies, ſuch is the extent of its Prerogative, that, from that moment, all the means the People poſſeſs to vindicate their liberty, would be annihilated. They would have no reſource left,—except indeed that uncertain and calamitous one, of an appeal to the ſword; which is no more, after all, than what the moſt enſlaved Nations enjoy.

Let us ſuppoſe, for inſtance, that abuſes of power ſhould be committed, which, either by their immediate operation, or by the precedents they might eſtabliſh, ſhould undermine the liberty of the ſubject. The People, it will be ſaid, would then have their remedy in the Legiſlative power poſſeſſed by their Repreſentatives. The latter would, at the firſt opportunity, interfere, and frame ſuch Bills as would prevent the like abuſes for the future. But here we muſt obſerve, that the Aſſent of the Sovereign is neceſſary to make thoſe Bills become Laws; and if, as we have juſt now ſuppoſed, he had no need of the ſupport of the Commons, how could they obtain his aſſent to laws thus purpoſely framed to abridge his authority?

Again, let us ſuppoſe that, inſtead of contenting itſelf with making ſlow advances to deſpotiſm, the Executive power, or its Miniſters, ſhould at once openly invade the liberty of the ſubject. Obnoxious Men, Printers for inſtance, or political Writers, are deſtroyed, either by military violence, or, to do things with more ſecurity, with the forms of law. Then, it will be ſaid, the Repreſentatives of the People would impeach the perſons concerned in thoſe meaſures. Though unable to reach a King who perſonally *can do no wrong*, they at leaſt would lay hold of thoſe Men who were the immediate inſtruments of his tyrannical proceedings, and endeavour, by bringing them to condign puniſhment, to deter future Judges or Miniſters from imitating them. All this I grant; and I will even add, that circumſtanced as the Repreſentatives of the People now are, and having to do with the Sovereign who can enjoy no dignity without their aſſiſtance, it is moſt likely that their endeavours in the purſuit of ſuch laudable objects would prove ſucceſsful. But if, on the contrary, the King, as we have ſuppoſed, ſtood in no need of their aſſiſtance, and moreover knew that he ſhould never want it, it is impoſſible to think that he would then ſuffer himſelf to

remain a tame ſpectator of their proceedings. The impeachments thus brought by them would immediately prove the ſignal of their diſmiſſion; and the King would make haſte, by diſſolving them, both to revenge what would then be called the inſolence of the Commons, and to ſecure his Miniſters.

But even thoſe are vain ſuppoſitions: the evil would reach much farther; and we may be aſſured, that if ever the Crown was to be in a condition to govern without the aſſiſtance of the Repreſentatives of the people, it would diſmiſs them for ever, and thus rid itſelf of an Aſſembly which, while it continued to be a clog on its power, could no longer be of any ſervice to it. This Charles the Firſt attempted to do when he found his Parliaments grew refractory, and the Kings of France really have done, with reſpect to the General Eſtates of their Kingdom.

And indeed if we conſider the extent of the Prerogative of the King of England, and eſpecially the circumſtance of his completely uniting in himſelf all the executive and active powers of the State, we ſhall find that it is no exaggeration to ſay, that he has power ſufficient to be as arbitrary as the Kings of France, were it not for the right of taxation, which

in England is poſſeſſed by the People; and the only conſtitutional difference between the French and Engliſh Nations is, that the former can neither confer benefits on their Sovereign, nor hinder his meaſures; while the latter, how extenſive ſoever the prerogative of their King may be, can deny him the means of exerting it.

But here a moſt important obſervation is to be made; and I intreat the Reader's attention to the ſubject. This right of granting ſubſidies to the Crown, can only be effectual when it is exerciſed by one Aſſembly alone. When ſeveral diſtinct Aſſemblies have it equally in their power to ſupply the wants of the Prince, the caſe becomes totally altered. The competition which ſo eaſily takes place between thoſe different Bodies, and even the bare conſciouſneſs which each entertains of its inability to hinder the meaſures of the Sovereign, render it impoſſible for them to make any effectual conſtitutional uſe of their privilege. "Thoſe different Parliaments or Eſtates (to repeat the "obſervation introduced in the former part "of this Work) having no means of recommending themſelves to their Sovereign, but "their ſuperior readineſs in complying with "his demands, vie with each other in grant-

"ing what it would not only be fruitleſs, but "even dangerous to refuſe. And the King, "in the mean time, ſoon comes to demand "as a tribute, a gift which he is confident to "obtain." In ſhort, it may be laid down as a maxim, that when a Sovereign is made to depend, in regard to his ſupplies, on more Aſſemblies than one, he, in fact, depends upon none. And indeed the King of France is not independent on his People for his neceſſary ſupplies, any otherwiſe than by drawing the ſame from ſeveral different Aſſemblies of their Repreſentatives: the latter have in appearance a right to refuſe all his demands: and as the Engliſh call the grants they make to their Kings, Aids or Subſidies, ſo do the Eſtates of the French Provinces call theirs *Dons gratuits*, or free gifts.

What is it, therefore, that conſtitutes the difference between the political ſituation of the French and Engliſh Nations, ſince their rights thus ſeem outwardly to be the ſame? The difference lies in this, that there has never been in England more than one Aſſembly that could ſupply the wants of the Sovereign. This has always kept him in a ſtate, not of a ſeeming, but of a real dependance on the Repreſentatives of the People for his neceſſary ſupplies; and how low

ſoever the liberty of the Subject may, at particular times, have ſunk, they have always found themſelves poſſeſſed of a moſt effectual means of reſtoring it, whenever they have thought proper ſo to do. Under Henry the Eighth, for inſtance, we find the Deſpotiſm of the Crown to have been carried to an aſtoniſhing height: it was even enacted that the Proclamations of the King ſhould have the force of law; a thing which even in France never was ſo expreſsly declared: yet, no ſooner did the Nation recover from its long ſtate of ſupineneſs, than the exorbitant power of the Crown was reduced within its conſtitutional bounds.

To no other cauſe than the diſadvantage of their ſituation, are we to aſcribe the low condition in which the Deputies of the People in the Aſſembly called the General Eſtates of France, were always forced to remain.

Surrounded as they were by the particular Eſtates of thoſe Provinces into which the Kingdom had been formerly divided, they never were able to ſtipulate conditions with their Sovereign; and inſtead of making their right of granting ſubſidies to the Crown ſerve to gain them in the end a ſhare in Legiſlation, they ever remained confined to the naked pri-

vilege of "humble Supplication and Remonstrance."

Thoſe Eſtates, however, as all the great Lords in France were admitted into them, began at length to appear dangerous; and as the King could in the mean time do without their aſſiſtance, they were ſet aſide. But ſeveral of the particular Eſtates of the Provinces are preſerved to this day: ſome, which for temporary reaſons had been aboliſhed, have been reſtored: nay, ſo manageable have popular Aſſemblies been found by the Crown when it has to do with many, that the kind of Government we mention is that which it has been found moſt convenient to aſſign to Corſica; and Corſica has been made *un pays d'Etats* (*a*).

(*a*) An idea of the manner in which the buſineſs of granting ſupplies to the Crown, was conducted by the States of the Province of Britany, under the reign of Lewis the Fourteenth, may be formed from ſeveral lively ſtrokes to be met with in the Letters of Mad. de Sévigné, whoſe Eſtate lay in that Province, and who had often aſſiſted at the holding of thoſe States. The granting of ſupplies was not, it ſeems, looked upon as any ſerious kind of buſineſs. The whole time the States were ſitting, was a continued ſcene of feſtivity and entertainment; the canvaſſing of the demands of the Crown was chiefly carried on at the table of the Nobleman who had been deputed from Court to hold

That the Crown in England ſhould, on a ſudden, render itſelf independant on the Commons for its ſupplies, that is, ſhould on a ſudden ſucceſsfully aſſume to itſelf a right to lay taxes on the ſubject, by its own authority, is not certainly an event in any degree likely to take place, nor indeed that ſhould, at this preſent time, raiſe any kind of political fear. But it is not equally impracticable that the right of the Repreſentatives of the People might be-

the States; and every thing was commonly decided by a kind of acclamation. In a certain Aſſembly of thoſe States, the Duke of Chaulnes, the Lord Deputy, had a preſent of fifty thouſand crowns made to him, as well as a conſiderable one for his Ducheſs, beſides obtaining the demand of the Court: and the Lady we quote here, commenting ſomewhat jocularly on theſe grants, ſays, *Ce n'eſt pas que nous ſoyons riches; mais nous ſommes honnêtes, nous avons du courage, & entre midi & une heure, nous ne ſavons rien refuſer à nos amis.* "It is not that we are rich; but we "are civil, we are full of courage, and, between twelve and "one o'clock, we are unable to deny any thing to our "friends."

The different Provinces of France, it may be obſerved, are liable to pay ſeveral taxes beſides thoſe impoſed on them by their own States. Dean Tucker, in one of his Tracts, in which he has thought proper to quote this Work, has added to the above inſtance of the French Provinces, that of the States of the Auſtrian Netherlands, which is very concluſive. And examples to the ſame purpoſe might be ſupplied by all thoſe Kingdoms of Europe in which Provincial States are held.

come invalidated, by being divided in the manner that has been juſt deſcribed.

Such a diviſion of the right of the People might be effected ſeveral different ways. National calamities for inſtance, unfortunate foreign wars attended with loſs of public credit, might ſuggeſt methods for raiſing the neceſſary ſupplies, different from thoſe which have hitherto been uſed. Dividing the Kingdom into a certain number of parts, which ſhould ſeverally vote ſubſidies to the Crown, or even diſtinct aſſeſſments to be made by the different Counties into which England is now divided, might, in the circumſtances we ſuppoſe, be looked upon as adviſeable expedients; and theſe being once introduced, might be continued afterwards.

Another diviſion of the right of the People, much more likely to take place than thoſe juſt mentioned, might be ſuch as might ariſe from acquiſitions of foreign dominions, the inhabitants of which ſhould in time claim and obtain a right to treat directly with the Crown, and grant ſupplies to it, without the interference of the Britiſh Legiſlature.

Should any Colonies acquire the right we mention—ſhould, for inſtance, the American Colonies have acquired it, as they claimed it,

it is not to be doubted that the conſequences that have reſulted from a diviſion like that we mention in moſt of the Kingdoms of Europe, would alſo have taken place in the Britiſh dominions, and that that ſpirit of competition which has been above deſcribed, would in time have manifeſted itſelf between the different Colonies. This deſire of ingratiating themſelves with the Crown, by means of the privilege of granting ſupplies to it, has even been openly confeſſed by an Agent of the American provinces (*a*), when, on his being examined by the Houſe of Commons, in the year 1766, he ſaid, "*the granting Aids to the Crown, is the* "*only means the Americans have of recommending* "*themſelves to their Sovereign.*" And the events that have of late years taken place in America, render it evident that the Colonies would not have ſcrupled going any lengths to obtain favourable conditions at the expence of Britain and the Britiſh Legiſlature.

That a ſimilar ſpirit of competition might be raiſed in Ireland, is alſo ſufficiently plain from certain late events. And ſhould the American Colonies have obtained their demands, and at the ſame time ſhould Ireland and America have increaſed in wealth to a cer-

(*a*) Doctor Franklin.

tain degree, the time might have come at which the Crown might have governed England with the ſupplies of Ireland and America—Ireland with the ſupplies of England and of the American Colonies—and the American Colonies with the money of each other, and of England and Ireland.

To this it may be objected, that the ſupplies granted by the Colonies, even though joined with thoſe of Ireland, never could have riſen to ſuch a height as to have counterbalanced the importance of the Engliſh Commons.—I anſwer, in the firſt place, that there would have been no neceſſity that the aids granted by Ireland and America ſhould have riſen to an equality with thoſe granted by the Britiſh Parliament: it would have been ſufficient, to produce the effects we mention, that they had only borne a certain proportion with theſe latter, ſo far as to have conferred on the Crown a certain degree of independance, and at the ſame time have raiſed in the Engliſh Commons a correſpondent ſenſe of ſelf-diffidence in the exerciſe of their undoubted privilege of granting, or rather *refuſing*, ſubſidies to the Crown.—Here it muſt be remembered, that the right of granting, or refuſing, ſupplies to the Crown, is the only ultimate, forcible, privilege the

Britiſh Parliament poſſeſs: by the Conſtitution they have no other, as hath been obſerved in the beginning of this Chapter: this circumſtance ought to be combined with the abſolute excluſiveneſs of the executive powers lodged in the Crown—with its prerogative of diſſenting from the Bills framed by Parliament, and even of diſſolving it (*a*).

(*a*) Being with Doctor Franklin at his houſe in Craven-ſtreet, ſome months before he went back to America, I mentioned to him a few of the remarks contained in this Chapter, and in general, that the claim of the American Colonies directly claſhed with one of the vital principles of the Engliſh Conſtitution. The obſervation, I remember, ſtruck him very much: it led him afterwards to ſpeak to me of the examination he had undergone in the Houſe of Commons; and he concluded with lending me the volume of the Collection of *Parliamentary Debates*, in which an account of it is contained. Finding the conſtitutional tendency of the claim of the Americans to be a ſubject not very generally underſtood, I added a few paragraphs concerning it, in the Engliſh edition I ſome time after gave of this work; and on publiſhing a third Edition of the ſame, I thought it might not be amiſs to write ſomething more compact on the ſubject, and have accordingly added the preſent new Chapter, into which I have transferred the few additional paragraphs I mention, leaving in the place where they ſtood (pag. 45) only the general obſervations on the right of granting ſubſidies, which were formerly in the French work. Several of the ideas, and even expreſſions con-

I ſhall mention in the ſecond place, a remarkable fact in regard to the ſubject we are treating (which may ſerve to ſhew that Politicians are not always conſiſtent, or even ſagacious in their arguments); which is, that the ſame perſons who are the moſt ſtrenuous advocates for granting to the American Colonies their demands, were at the ſame time the moſt ſanguine in their predictions of the future wealth and greatneſs of America, and at the ſame time, alſo, uſed to make frequent complaints of the undue influence which the Crown derives from the ſcanty ſupplies granted to it by the kingdom of Ireland (*a*).

Had the American Colonies fully obtained their demands, both the eſſence of the preſent Engliſh Government, and the condition of the Engliſh People, would certainly have been altered thereby: nor would ſuch a change have been inconſiderable, but in proportion as

tained in this Chapter, made their appearance in the *Public Advertiſer*, about the time I was preparing the firſt Edition: I ſent them myſelf to that Newſpaper, under the ſignature of *Advena.* I mention this for the ſake of thoſe perſons who may perchance remember having ſeen the ſketch I allude to.

(*a*) For inſtance, the complaints made in regard to the penſions on the Iriſh eſtabliſhment.

the Colonies ſhould have remained in a ſtate of national poverty (*a*).

(*a*) When I obſerve that no Man who wiſhed for the preſervation of the form and ſpirit of the Engliſh Conſtitution, ought to have deſired that the claim of the American Colonies might be granted them, neither do I mean to ſay that the American Colonies ſhould have given up their claim. The wiſdom of Miniſters, in regard to American affairs, ought to have been conſtantly employed in making the Colonies uſeful to this Country, and at the ſame time in hiding their ſubjection from them (a caution which is, after all, more or leſs uſed in every Government upon earth); it ought to have been exerted in preventing the oppoſite intereſts of Britain, and of America, from being brought to an iſſue, to any ſuch claſhing dilemma as would render diſobedience on the one hand, and the reſort to force on the other, almoſt ſurely unavoidable. The generality of people fancy that Miniſters uſe a great depth of thought, and much forecaſt in their operations; whereas the truth is, that Miniſters in all Countries never think but of providing for preſent, immediate, contingencies; in doing which they conſtantly follow the open track before them. This method does very well for the common courſe of human affairs, and even is the ſafeſt; but whenever caſes and circumſtances of a new and unknown nature occur, ſad blunders and uproar are the conſequences. The celebrated Count Oxenſtiern, Chancellor of Sweden, one day when his Son was expreſſing to him his diffidence of his own abilities, and the dread with which he thought of ever engaging in the management of public affairs, made the following Latin anſwer to him: *Neſcis, mi fili, quam parvâ cum ſapientiâ regitur mundus.* "You do not know, my Son, with what little wiſdom the "World is governed."

CHAP. XXI.

Concluſion.—A few Words on the Nature of the Diviſions that take place in England.

I SHALL conclude this Work with a few Obſervations on the total freedom from violence with which the political diſputes and contentions in England are conducted and terminated, in order both to give a farther

Matters having come to an eruption, it was no longer to be expected they could be compromiſed by the palliative offers ſent at different times from this Country to America. When the Earl of Carliſle ſolicited to be at the head of the ſolemn Commiſſion that ſailed for the purpoſe we mention, he did not certainly ſhew modeſty equal to that of the Son of Chancellor Oxenſtiern. It has been ſaid that, in that ſtage of the conteſt, the Americans could not think that the propoſals thus ſent to them were ſeriouſly meant: however, this cannot have been the principal cauſe of the miſcarriage of the Commiſſion. The fact is, that after the Americans had been once made to open their eyes on their political ſituation, and rendered ſenſible of the local advantages of their Country, it was become in a manner impoſſible to have ſtruck with them any bargain at which either Nation would have afterwards had cauſe to rejoice, or even to have made any bargain at all. It would be needleſs to ſay here any thing more on the ſubject of the American conteſt.

The motto of one of the Engliſh Nobility ſhould have been that of Miniſters, in their regulations for rendering the Colonies uſeful to the Mother Country,—*Faire ſans dire.*

proof of the ſoundneſs of the principles on which the Engliſh Government is founded, and to confute in general the opinion of foreign Writers or Politicians, who, miſled by the apparent heat with which thoſe diſputes are ſometimes carried on, and the clamour to which they give occaſion, look upon England as a perpetual ſcene of civil broils and diſſenſions.

In fact, if we conſider, in the firſt place, the conſtant tenor of the conduct of the Parliament, we ſhall ſee that whatever different views the ſeveral Branches that compoſe it may at times purſue, and whatever uſe they may accordingly make of their privileges, they never go, in regard to each other, beyond the terms, not only of decency, but even of that general good underſtanding which ought to prevail among them.

Thus the King, though he preſerves the ſtyle of his Dignity, never addreſſes the two Houſes but in terms of regard and affection; and if at any time he chooſes to refuſe their Bills, he only ſays that he will conſider of them *(le Roy s'adviſera)*; which is certainly a gentler expreſſion than the word *Veto*.

The two Houſes on their part, though very jealous, each within their own walls, of the

freedom of ſpeech, are, on the other hand, careful that that liberty ſhall never break out into unguarded expreſſions with regard to the perſon of the King. It is even a conſtant rule amongſt them never to mention him, when they mean to blame the adminiſtration; and thoſe things which they may chooſe to cenſure even in the Speeches made by the King in perſon, and which are plainly his own acts, are never conſidered but as the deed of his Miniſters, or in general of thoſe who have adviſed him.

The two Houſes are alſo equally attentive to prevent every ſtep that may be inconſiſtent with that reſpect which they mutually owe to one another. The examples of their differences with each other are very rare, and were, for the moſt part, mere miſunderſtandings. Nay, in order to prevent all ſubject of altercation, the cuſtom is, that when one of the two Houſes refuſes to conſent to a Bill preſented by the other, no formal declaration is made of ſuch refuſal; and that Houſe whoſe Bill is rejected, learns its fate only from their hearing no more of it, or by what the Members may be told as private perſons.

In each Houſe, the Members take care, even in the heat of debate, never to go be-

yond certain bounds in their manner of ſpeaking of each other: if they were to offend in that reſpect, they would certainly incur the cenſure of the Houſe. And as reaſon has taught Mankind to refrain, in their wars, from all injuries to each other that have no tendency to promote the main object of their contentions, ſo a kind of Law of Nations (if I may ſo expreſs myſelf) has been introduced among the perſons who form the Parliament, and take part in the debates: they have diſcovered that they may very well be of oppoſite parties, and yet not hate and perſecute one another. Coming freſh from debates carried on even with conſiderable warmth, they meet without reluctance in the ordinary intercourſe of life; and, ſuſpending all hoſtilities, they hold every place out of Parliament to be neutral ground.

In regard to the generality of the People, as they never are called upon to come to a final deciſion with reſpect to any public meaſures, or expreſsly to concur in ſupporting them, they preſerve themſelves ſtill more free from party ſpirit than their repreſentatives themſelves ſometimes are. Conſidering, as we have obſerved, the affairs of Government as only matter of ſpeculation, they ne-

ver have occaſion to engage in any vehement conteſts among themſelves on that account. Much leſs do they think of taking an active and violent part in the differences of particular factions, or the quarrels of private individuals. And thoſe family feuds, thoſe party animoſities, thoſe victories and conſequent outrages of factions alternately ſucceſsful; in ſhort, all thoſe inconveniences which in ſo many other States have conſtantly been the attendants of liberty, and which Authors tell us we muſt ſubmit to, as the price of it, are things in very great meaſure unknown in England.

But are not the Engliſh perpetually making complaints againſt the Adminiſtration? and do they not ſpeak and write as if they were continually expoſed to grievances of every kind?

Undoubtedly, I ſhall anſwer, in a Society of Beings ſubject to error, diſſatisfactions will neceſſarily ariſe from ſome quarter or other; and in a free Society, they will be openly manifeſted by complaints. Beſides, as every Man in England is permitted to give his opinion upon all ſubjects, and as to watch over the Adminiſtration, and to complain of grievances, is the proper duty of the Repreſentatives of the People, complaints muſt neceſ-

ſarily be heard in ſuch a Government, and even more frequently, and upon more ſubjects, than in any other.

But thoſe complaints, it ſhould be remembered, are not, in England, the cries of oppreſſion forced at laſt to break its ſilence. They do not ſuppoſe hearts deeply wounded. Nay, I will go farther, they do not even ſuppoſe very determinate ſentiments; and they are often nothing more than the firſt vent which Men give to their new, and yet unſettled conceptions.

The agitation of Men's minds is not therefore in England what it would be in other States: it is not the ſymptom of a profound and general diſcontent, and the forerunner of violent commotions. Foreſeen, regulated, even hoped for by the Conſtitution, this agitation animates all the different parts of the State, and is to be conſidered only as the beneficial viciſſitude of the ſeaſons. The governing Power being dependent on the Nation, is often thwarted, but ſo long as it continues to deſerve the affection of the People, can never be endangered. Like a vigorous tree, which ſtretches its branches far and wide, the ſlighteſt breath can put it in motion; but it acquires and exerts at every minute a new degree of force, and reſiſts

the winds, by the ſtrength and elaſticity of its fibres, and the depth of its roots.

In a word, whatever Revolutions may at times happen among the perſons who conduct the public affairs in England, they never occaſion the ſhorteſt ceſſation of the power of the Laws, nor the ſmalleſt diminution of the ſecurity of individuals. A Man who ſhould have incurred the enmity of the moſt powerful Men in the State,—what do I ſay!—though he had, like another *Vatinius*, drawn upon himſelf the united deteſtation of all parties, might, under the protection of the Laws, and by keeping within the bounds required by them, continue to ſet both his enemies and the whole Nation at defiance.

The limits preſcribed to this book do not admit of entering into any farther particulars on the ſubject we are treating here; but if we were to purſue this inquiry, and examine into the influence which the Engliſh Government has on the manners and cuſtoms of the People, perhaps we ſhould find that, inſtead of inſpiring them with any diſpoſition to diſorder or anarchy, it produces in them a quite contrary effect. As they ſee the higheſt Powers in the State conſtantly ſubmit to the Laws, and they receive, themſelves, ſuch a certain protection

from thoſe Laws, whenever they appeal to them, it is impoſſible but they muſt inſenſibly contract a deep-rooted reverence for them, which can at no time ceaſe to have ſome influence on their actions. And, in fact, we ſee that even the lower claſs of the People, in England, notwithſtanding the apparent exceſſes into which they are ſometimes hurried, poſſeſs a ſpirit of juſtice and order, ſuperior to what is to be obſerved in the ſame rank of men in other Countries. The extraordinary indulgence which is ſhewn to accuſed perſons of every degree, is not attended with any of thoſe pernicious conſequences which we might at firſt be apt to fear from it. And it is perhaps to the nature of the Engliſh Conſtitution itſelf (however remote the cauſe may perhaps ſeem), and to the ſpirit of juſtice it continually and inſenſibly diffuſes throughout all orders of the People, that we are to attribute the ſingular advantage poſſeſſed by the Engliſh Nation, of employing an incomparably milder mode of adminiſtering Juſtice in criminal matters than any other Nation, and at the ſame time of affording perhaps fewer inſtances of violence or cruelty.

Another conſequence which we might obſerve here, as flowing alſo from the principles of the Engliſh Government, is the moderate

behaviour of all thoſe who are inveſted with any branch of public authority. And if we look at the conduct of all public Officers in England, from the Miniſters of State, or the Judge, down to the loweſt Officers of Juſtice, we find a ſpirit of forbearance and lenity prevailing in England, among all perſons in power, which cannot but create ſome ſurpriſe in thoſe who have viſited other Countries.

One circumſtance more I ſhall obſerve here, as peculiar to England, which is the conſtant attention of the Legiſlature in providing for the intereſts and welfare of the People, and the indulgences ſhewn by them to their very prejudices. Advantages theſe, which are no doubt the conſequence of the general ſpirit which animates the whole Engliſh Government, but are alſo particularly owing to that circumſtance peculiar to it, of having lodged the active part of Legiſlation in the Hands of the Repreſentatives of the Nation, and committed the care of alleviating the grievances of the People to perſons who either feel them, or ſee them nearly, and whoſe ſureſt path to advancement and glory is to be active in finding remedies for them.

Not that I mean, however, that no abuſes take place in the Engliſh Government, and

that all poſſible good laws are made in it; but that there is a conſtant tendency in it, both to correct the one, and improve the other. And that all the laws that are in being are certainly executed, whenever appealed to, is what I look upon as the characteriſtic and undiſputed advantage of the Engliſh Conſtitution. A Conſtitution the more likely to produce all the effects we have mentioned, and to procure in general the happineſs of the People, in that it has taken Mankind as they are, and has not endeavoured to prevent every thing, but to regulate every thing: I ſhall add, the more difficult to diſcover, becauſe its form was complicated, while its principles were natural and ſimple. Hence it is that the Politicians of Antiquity, ſenſible of the inconveniences of the Governments they had opportunities of knowing, wiſhed for the eſtabliſhment of ſuch a Government, without much hopes of ever ſeeing it effected (*a*). Nay, Tacitus, the beſt judge of them all, conſidered it as a project entirely chimerical (*b*). Nor was it becauſe he had not thought of it, had not

(*a*) " Statuo eſſe optimè conſtitutam Rempublicam quæ " ex tribus generibus illis, regali, optimo, et populari, mo- " dicè confuſa."—Cic. *Fragm.*

(*b*) " Cunctas Nationes & Urbes, Populus, aut Priores, " aut Singuli, regunt. Delecta ex his & conſtituta Rei-

reflected on it, that he was of this opinion: he had fought for fuch a government, had had a glimpfe of it, and yet continued to pronounce it impracticable.

Let us not, therefore, afcribe to the confined views of Man, to his imperfect fagacity, the difcovery of this important fecret. The world might have grown old, generations might have fucceeded generations, ftill feeking it in vain. It has been by a fortunate conjunction of circumftances, I fhall add, by the affiftance of a favourable fituation, that Liberty has at laft been able to erect herfelf a Temple.

Invoked by every Nation, but of too delicate a nature, as it fhould feem, to fubfift in Societies formed of fuch imperfect beings as Mankind, fhe fhewed, and but juft fhewed, herfelf to the ingenious Nations of antiquity who inhabited the fouth of Europe. They were conftantly miftaken in the form of the worfhip they paid to her. As they continually aimed at extending dominion and conqueft over other Nations, they were no lefs miftaken in the fpirit of that worfhip; and though they continued for ages to pay their devotions to her, fhe ftill continued, with regard to them, to be the *unknown* Goddefs.

" publicæ forma, laudari facilius quàm evenire; vel fi evenit, " haud diuturna effe poteft."—Tac. Ann. lib. iv.

Excluded, ſince that time, from thoſe places to which ſhe had ſeemed to give a preference, driven to the extremity of the Weſtern World, baniſhed even out of the Continent, ſhe has taken refuge in the Atlantic Ocean. There it is, that, freed from the dangers of external diſturbance, and aſſiſted by a happy pre-arrangement of things, ſhe has been able fully to diſplay the form that ſuited her; and ſhe has found ſix centuries to have been neceſſary to the completion of her Work.

Being ſheltered, as it were, within a Citadel, ſhe there reigns over a Nation which is the better entitled to her favours as it endeavours to extend her Empire, and carries with it, to every part of its dominions, the bleſſings of induſtry and equality. Fenced in on every ſide, to uſe the expreſſions of Chamberlayne, with a wide and deep ditch, the ſea, guarded with ſtrong outworks, its ſhips of war, and defended by the courage of her Seamen, ſhe preſerves that important ſecret, that ſacred fire, ſo difficult to be kindled, and which, if it were once extinguiſhed, would perhaps never be lighted again. When the World ſhall have been again laid waſte by Conquerors, ſhe will ſtill continue to ſhew Mankind, not only the principle that

ought to unite them, but what is of no leſs importance, the form under which they ought to be united. And the Philoſopher, when he conſiders the conſtant fate of civil Societies amongſt Men, and obſerves the numerous and powerful cauſes which ſeem as it were unavoidably to conduct them all to a ſtate of incurable political Slavery, takes comfort in ſeeing that Liberty has at length diſcloſed her ſecret to Mankind, and ſecured an Aſylum to herſelf.

INDEX.

THE TANJORE MAHARAJA SERFOGI'S SARASWATI MAHAL.

I N D E X.

AMERICAN Colonies, their claim of voting supplies to the crown, hurtful, if obtained, to the English constitution, 522, 527. What ought to have been the general conduct of ministers in regard to the colonies, 527, 528.

Appeal, in case of murder, its effects, and to whom allowed, 89.

Army, restrictions on the power of the king in regard to the keeping of it, 90, 91. The appropriated funds for the paying of the same, 91. If not in England, a means of supporting the authority of the crown, 444, 471, *passim*. How little its assistance was useful to James II. 468, 469. See *Military Power* and *Crown*.

Arrest, method of, in civil causes by the English laws, 113, 116. By the Roman laws, 116, 118. The alterations in the English law in that respect, 119.

Assemblies, popular, the disadvantages they lie under in regard to their coming to any deliberate well-weighed resolution, 249, 251. The advantages a few distinguished citizens have over them, 251, 257, 262, 263, 265. Tully's passage concerning them, 266. See *People*, *Commonwealths*, *Rome*.

Athens, the people do not seem to have really enjoyed much liberty in that republic, 275. An instance of the proceedings of the magistrates, ibid.

Aula Regis, what kind of court, 15. The court of Common Pleas dismembered from it, 111. The court of King's Bench may be considered as the remains of it, 118.

Author, occasional personal remarks of his, 377, 426, 444. 452. His *Memorials of Human Superstition* quoted, 513. His conversation with Dr. Franklin, 525.

INDEX.

B.

Barons, originally in a great meaſure independent on the crown, in France, 12. Not ſo in England, 15, 21. Unite in a common cauſe with the people, 21, 23, 338, 454, 455.

Beauchamp, lord, procures the paſſing of a bill for limiting perſonal arreſts, 119.

Bills, how deliberated upon and framed, 57, 68, 226, 234, 268. See *Commons* and *Parliament*.

Bill of Rights, an account of, 58, 59. Remarkable impartiality and univerſality of its proviſions, 342.

Blackſtone, judge, quoted, 69, 82, 145, 182, 187, 362, 380.

Burnet, biſhop, quoted, 367, 397, 469.

C.

Cæſar, public ſpeech of his quoted, 382, 383.

Cenſorial power, that eſtabliſhed in Rome only a ſenatorial artifice, 393. See *Preſs*, liberty of the.

Cenſors, in Rome, might remove a man from one tribe into another, 277, and elect ſenators, ibid. See *Rome*.

Chancery, court of, its office in regard to the framing of writs, 129, 130. See *Equity*, courts of.

Charles I. ſketch of his reign, 48, 52. Maintains his ground eleven years againſt the violent political and religious ſpirit of his times, 459. His attempt to ſeize the five members; the period of the beginning of the civil wars, 462.

Civil Engliſh laws, divided into unwritten and written law, 107. The ſources of the unwritten law, 107, 109. How far the *civil* law is a part of the ſame, 110. What the written law is, ibid. Peculiarities of the Engliſh civil laws, 113, 120. Refinements and ſubtilties in them, 120, 122, 128, 130, 131, 134, 135, 136. Compared with the old Roman civil laws, 127, 128.

Civil power in England, how ſuperior to the military, 462, 472.

Civil Roman laws, the conſtant diſlike of the Engliſh lawyers for them, 105, 106. Formalities in the ancient Roman laws, 124, 127. Divided into *civil* and *prætorial* laws, 142, 143. The different collections of them, 149. See *Prætor*.

Coke, Sir Edward, quoted, 145, 176, 187, 227, 295.

Comines, Philip de, quoted, 30, 40.

Commons, Engliſh, their firſt origin, under Henry III. and Edward I. 3, 32. How inconſiderable their weight at firſt, 33. This ſoon increaſes, 34. Farther advances, 41, 42. How the houſe is conſtituted, 61, 62. Vindicate the right of taxation againſt the attempts of the Crown, 45, 51. And of the lords, 85. Their exiſtence wholly depends upon that right, ibid. The firſt inſtance of a miſunderſtanding between them and the lords in regard to money bills, 86. Commonly grant the king's revenue for life, 79. See *Taxation*. They cannot vote by proxy, 227. Enjoy a freedom of debate ſuperior to that ever poſſeſſed by any popular aſſembly, 235. See *Propounding*. They are debarred from any ſhare in the Executive authority, 280, 281. Are thence led to ſerve the people faithfully, 283, 284. Striking inſtances of this in the laws they have framed at particular times, 340, 359, 362. And in their watching afterwards on their execution, 363. Have impeached the ſervants of the crown and judges, 363, 366. Their proceedings in the caſe of ſir John Coventry, 367. See *Parliament* and *Repreſentative*. Abridge their own perſonal privileges, 370. In what theſe privileges now conſiſt, ibid. Do ſtrict juſtice on their own members, 371, 373. On what occaſion they repealed the ſtatute, *De Hæretico Comburendo*, 384. Their attacks on the crown's prerogative defeated by the lords, 395, 398. They in their turn defeat the like attempts from the lords, 397, 398.

Commonwealths, the people in them apt to be miſled by favourite leaders, 198, 200. The diviſion of the executive authority that takes place in them, makes it very difficult to lay it under proper reſtraints, 215. 216. The people unavoidably betrayed by thoſe whom they truſt with power, 271, 277, 278, 284. Revolutions always concluded in them in a diſadvantageous manner to public liberty, 325. See *Revolutions*. The laws to ſecure the liberty of the citizens, beſides being imperfect, are not even carefully executed, 343, & ſeq. See *Rome*. Cannot ſubſiſt without certain arbitrary powers, contrary to the liberty of the citizens, 421, 422. Do not admit the liberty of ſpeaking and writing, and perhaps cannot, 425, 426. Reſpect of perſons cannot be prevented in them in the adminiſtration of juſtice, 441, 442. The power of the government ſuppoſed by law

to be unbounded till ſtopped by ſome poſitive and declared regulation, 451, & ſeq. By what means commonwealths generally loſe their liberties, 481. Real great difficulty for the people in them to preſerve their rights, 482, 484. See *Rome* and *Geneva*.

Conqueſt, the, is the real æra of the formation of the preſent Engliſh government, 7.

Conſtitution, Engliſh, the æras of its formation, 40, 59. Being different from that of all other free ſtates, cannot fall into ruin from the ſame cauſes, 473. Cauſes that operate for its preſervation, 481, 487. Endangered by the offers of Columbus to Henry VII. 487, 488. Farther reaſons of its future preſervation, 488, 494. How it riſes again, after being in a manner overwhelmed, 495. Dangers to which it may be expoſed, 496, 497. In what circumſtances it may be looked upon as annihilated, 498. Meddling with it, upon the ſcore of improvement, may prove very dangerous experiments, 471, 506, 507. See *Crown*. Would have been altered by granting the Americans their claims, 522, 527. See *Taxation*. Seems to diffuſe a ſpirit of order and juſtice among the lower claſſes of people, 534, 535. Such a one wiſhed for by the politicians of antiquity, 537, 538.

Conſul, the æra of their creation, and nature of their office, 336. Unreſtrained power, 345. See *Rome*.

Coronation oath, 92.

Coventry, ſir John, his caſe, 367. Reſentment of the commons, and bill they paſs, ibid. An obſervation on that bill, 369, 370.

Courts of law, in England, their names and functions, 111, 112. Kept by parliament under ſtrict rules, 375, 376. The great impartiality of their proceedings, 376, 379. A few remarkable inſtances, 377, 379, 380. See *Law*, and *Jury*.

Cromwell, his fruitleſs attempts to form a popular aſſembly obedient to him, 430, 432.

Crown, its power much ſuperior in England after the Conqueſt, to what it was in France, 10, 20. The barons compelled to unite with the commonalty, to reſtrain its power, 21, 24. Its preſent conſtitutional prerogatives, 72, 73. Reſtraints it lies under, 87, 91. See *King*. Totally dependent on the people for its ſupplies, 74, 77. Uſefulneſs of its power in preventing any citizen or po-

pular leader from acquiring a degree of power dangerous to public liberty, 202—206. Inſtances of it, 214. Is not to make open propoſals to Parliament, for their aſſent or diſſent, 239, 240. May ſend them meſſages, and to what effect, 237. Its name not to be introduced to influence debates, 269. Unites in itſelf the whole executive authority, 281, 282. Thereby produces an union in a common cauſe among all orders of ſubjects, 285—287. Is like an ever-ſubſiſting Carthage that maintains the virtue of the repreſentatives of the People, 288. Farther illuſtration of the ſame fact, 356, & ſeq. 367—370. The power of *Crowns* has not produced theſe effects in other countries, 388. Numerous inſtances of this, 388—391. The ſtability of the executive power of the Engliſh crown, 391, 392. Is a great peculiarity of it, ibid. Is not a ſubject to be explained here otherwiſe than by facts, 393—395. Its power alternately defended by the two houſes, 395, 396. The ſecret forbearance of the two houſes not to invade its prerogative, 399, 400. Very remarkable inſtances of this, 403—409. Its whole authority centres in the ſovereign, the privy council only to adviſe him, or witneſs his operations, 404. Its ſecure power rendered conſpicuous in the facility with which it diſmiſſes great men from their employments, 409, 412. Not ſo in other monarchies, ibid. The facility with which it diſmiſſes the Parliament, 413—415. This facility rendered remarkable by the effects that take place in other monarchies, ibid. Never waged war againſt, except by perſons who poſitively laid claim to it, or at leaſt upon national grounds, 416, 417. Its power more ſecure in itſelf, but not ſo indelibly annexed to the perſon of an individual as in other countries, 418. The ſecret cauſes of its peculiar ſtability is a ſubject more properly belonging to philoſophy than to politics, 419. Great advantages reſult from this ſtability, 420. I. The numerous reſtraints it is able to bear, and great freedom it can allow the ſubject at its expence, 421—424. II. The liberty of ſpeaking and writing, carried to the great extent it is in England, 424—428. III. The unlimited freedom of debate in parliament, 429, 434, 435. IV. The union among all orders of ſubjects in defence of public liberty, 435, 438. V. The unlimited freedom allowed to the

people, of meddling with government affairs, 438—440. VI. The impartiality with which juſtice is dealt, without reſpect of perſons, 440—444. VII. Needleſſneſs of an armed force to ſupport its power, 397, 444, & ſeq. 456—472. VIII. Its ſtrict reſpect even for the letter of the law, 451, 456. IX. The lenity uſed in the adminiſtration of criminal juſtice may perhaps be aſcribed in great part to the general ſecurity the ſtable power of the crown gives to the whole machine of government, 454. The great power the crown formerly derived from its dominions beyond ſea, ſupplied afterwards by hidden circumſtances at home, 455, 458. Inſtances of this great power without the ſupport of an armed force, 458, 462. It keeps the military power in a ſurpriſing ſtate of ſubjection to the law, 462—467. Inſtances of this, ibid. Really could not, in the general ſituation of things, derive any aſſiſtance from a ſtanding army againſt the people, 467, 468. The method it ſhould adopt for ſetting aſide the preſent conſtitution, 469, 470. Its power is wholly annexed to the civil branch of its office, 458, 471. Hints concerning its effectual foundations, 471, 472. Prevents the Engliſh conſtitution from being deſtroyed in the ſame manner the Roman republic was, 477. The great uſefulneſs of its *veto* power, 487. Conſiderations on the attempts to abridge its prerogative, 498. In what circumſtances theſe attempts might be brought to ſucceed, 499, 500. A compariſon between its prerogative, and that of the kings of Sweden, before the laſt revolution, 501—504. The abridging of its prerogative might not anſwer the expectations of thoſe politicians who wiſh for it, 501, & ſeq. Sketches of the dangers to public liberty that might ariſe therefrom, 505, 511. The rule to be followed in purſuing ſuch attempts, 511, 512. How dependent on the People for its ſupplies, ſee *Taxation*.

Cunningham's Law Dictionary quoted, 129, 152.

D.

Debate, freedom of, ſecured by the bill of rights, 97. See *Propounding*. How conducted in the Engliſh parliament, 66—68, 267—269. The unlimited freedom exerciſed in the Engliſh parliament not followed by any bad conſequences, and why, 434, 435.

Dictators, their great power, 264, 346. Their abſolute power was often uſeful, 421, 422. See *Rome*.

Diſſolution of the parliament, its effects, 65. Eaſily effected by the crown in England, 414, 415.

Douglas, earls of, cauſed to be ſlain by king James II. of Scotland, 411.

E.

Edward I. ſurnamed the Engliſh Juſtinian, 31.

Elections, laws relating to them, 63, 64, 98. *Grenville's* bill for deciding conteſted elections, 99. Advantages ariſing from the right of the People to elect repreſentatives, 289, 290, 308—314. See *People*.

Elizabeth, queen, the inquiſitorial court of *High Commiſſion* eſtabliſhed during her reign, 46.

Emancipation of ſons, in Rome, manner of, 140, 141.

England, the power of the king becomes very great at the æra of the Conqueſt, 13. The lords or barons much dependent on the crown, 15. Are thence compelled to unite in a common cauſe with the people, 21—24. Different from France, in that it formed one compact united kingdom, 26. This circumſtance favours the eſtabliſhment of public liberty, ibid. A peculiarity of its government, viz. the advantageous manner to public liberty in which revolutions have conſtantly been concluded, 324, 337—343. See *Revolutions*. The ſtrictneſs with which laws favourable to the liberty of the ſubject are executed, 343, & ſeq. 357, & ſeq. See *Commons*. Remarkable impartiality in the courts of law, 376—378. Inſtances quoted, 377, 380. Farther ſtrictures on the ſame ſubject, 442—444. The People may be ſaid in England to be inveſted with both the judicial and cenſorial powers, 428, 429. Singular law doctrine concerning the authority of government, and the liberty of the ſubject, 451—457. The people's ſituation different from that of the people in Rome, 475, 476. See *People*. The balance of the people in government is connected with the right of property, 481. See *Taxation*. Diviſions among the people never carried very far, 532, 534. The lower claſs poſſeſſed of a conſiderable ſpirit of order and juſtice, 534, 535.

Equity, courts of, an inquiry into the meaning of the word, and their real office, 137, 138. A court of this kind

existed in Rome, 138, 139. See *Prætor*. Remedies afforded by the English courts of equity, 143, 144. How these courts were first instituted, ibid. The opposition they meet, 145. Their method of proceeding to enforce appearance, and submission to their decrees, 145, 146. Are kept within much more strict bounds than the *Prætor's* equity court was in Rome, 150—152. Farther definition of their office, 152, 154.

Executive power, lodged in the king, is more easily repressed when confined to a sole indivisible seat, 215, & seq. Is taken out of the hands of the representatives of the people, 280, 281. Great advantages thence arising, 280, 285. See *Crown*.

F.

Faire sans dire, the motto quoted, 528.

Favourite of the people, how prevented in the English constitution from acquiring a power dangerous to public liberty, 206, & seq. See *Commonwealths*.

Felton, his answer to the bishop of London, 181.

Feudal government introduced in France through a long series of events and years, 10. Is introduced suddenly and at once in England by the Conquest, 13. Consequences of these differences, 15.

France, the feudal government was established in it in a very slow manner, and how, 10, 11. The crown was at first elective, 11. The authority of the king originally very inconsiderable, 12, 16, 17. The lords or barons were in great measure independant on the crown, ibid. These circumstances prejudicial to the liberty of the people, ibid. 18—20. Is formed by an aggregation of many different sovereignties, 18, 19. See *Re-unions*. The remarkable treaty by which the war for the *public good* was terminated, 30. General estates, how constituted, 34. The third estate or commons never possessed of any weight, ibid. A remarkable insurrection, 36. The constitution of France about the time of Hugh Capet, much the same with that of the German empire at present, 39. What they call *Edits enrégistrés*, 70. French parliament, what, ibid. Late king's expedient for dismissing the parliament of Paris, 413, 414. The jealousy of the crown against that assembly, 432, 433. Comparison between the

French and English constitution in regard to the right of taxation, 45, 516—520.
Franklin, Dr. quoted, 523, 525.
French language introduced into the English laws by William the Conqueror, 69. Is still used by the king in declaring his intention to the parliament, 68. Judge Blackstone's passage on that subject, ibid.

G.

George I. king, led into an imprudent step, 398, 499, 507.
General warrants, set aside, 486.
Geneva, republic of, mentioned, 230, 254, 307, 486.
Germany, by what cause the growth of the power of the crown has been checked there, 39. Its present state compared with that of France in the time of Hugh Capet, ib.
Grecian commonwealths, revolutions in them only favourable to the particular interests of leaders and demagogues, 336. The reproach made them by Cæsar, 382, 383.
Gracchi, how forsaken by the people, 265.
Grand Jury, its office, 170.
Guise, duke of, slain by order of K. Henry III. of France, 411, 412.

H.

Habeas Corpus act, when passed, and for what purpose, 192. The tenor of it, 192—194. The particular occasion of it, 362. Expressions of Judge Blackstone on the subject, ibid. Quoted by Junius, ibid. On what occasion suspended, and with what caution, 424. By what means finally settled, 486.
Hale, Judge, quoted, 31. His description of the office of a Jury, 178.
Henry I. grants a charter to his subjects, what condition he annexes to it, 24.
Henry VIII. his great power, 45. Was unsupported by a standing army, 390.
Holt, Judge, remarkable opinion delivered by him, 318.
Hugh Capet, the first hereditary king in France, 11. The haughty answer of a French lord to him, 13.
Hume, Mr. a few words on the character given by him of James II. 460.

I N D E X.

I.

Jacob's Law Dictionary quoted, 128, 152.

James I. liberty begins to revive in his reign, 47. His lofty notions concerning regal authority, ibid. Keeps his ground against the restless spirit of the times, 459.

James II. how his dethronement was effected, 55, 57. Was inexcusable in his conduct, 460. A few more words on the manner of his being dethroned, 459, 460. Receives no manner of assistance from his numerous army, 468, 469.

Jesuits, how expelled from Spain, 415, 416.

Impeachment, public, what, and its effects, 93, 94. The king's pardon no bar to the prosecution of an impeachment, 95. Can it prevent the execution of the judgment? ibid. Instances of ministers and judges impeached by the commons, 93, 94, 363—366.

Imprisonment, the method formerly used for liberating imprisoned persons, 189. They were insufficient against the power of the privy council, 190. A new force given them by the petition of rights, ibid. Evaded again by means of an *alias* and a *pluries*, 191. *Habeas corpus* act, 192.

John, king, grants the great charter, 26, 27.

Johnson, Dr. Samuel, his opinion concerning the office of the courts of equity, examined, 137.

Journal of the commons. Their address to the crown in regard to the printing of the same, 408.

Judges, how they may be removed from their offices, 79. Their office in criminal causes is only to direct the jury, and afterwards to pronounce the law, 179, 180. Decide in Felton's case the torture cannot be used, 181. Cannot alter the mode of punishment, 182. Instances of judges impeached, 363—366. See *Courts*.

Judicial power, in regard to criminal matters, the necessary cautions in establishing such power, 154, & seq. Should not be trusted, especially in a free state, to any too powerful persons or bodies, 163, & seq. Allusions to the foreign courts of law, 164, 167. See *Trial*. May be said in England to be in the hands of nobody, 184. Lodged in the people, 428, 429.

Junius's letter, quoted, 176, 362.

Jury, how they are to shape their verdict, 175. Must decide both upon the fact and the criminality of it, 176. What rules must follow in their opinions, 178. Judge

Hale's remarkable paſſage in that reſpect, ibid. Uſually pay a great regard to the judge's direction, 186. The effect of their recommending to mercy, ibid. See *Trial* and *Judicial Power.*

Juſtice, impartiality of its adminiſtration in England, 376—380, 442, 443. See *Law* and *Judicial Power.*

K.

King, his prerogative by the conſtitution, 72, 73. The reſtriction ſet by law upon the exerciſe of the ſame, 87—91. Commonly granted a revenue for life, 79. Not to interfere, nor his privy-council, in the deciſion of cauſes either civil or criminal, 88. It is diſputed whether he can remit the proſecution of a ſentence awarded in conſequence of an impeachment, 95. Not to be named in debates, 269. The laſt inſtance of one uſing his negative voice, 405. See *Crown.*

L.

Laws. See *Legiſlation.* Difficulty of procuring juſt ones, 248. A very neceſſary caution in framing them, 279, 280.

Law, criminal, how ſtrictly the letter of it was adhered to in England, without any extenſion, 180, 318, 453. Great mildneſs of it, 185—187. See *Puniſhments.*

Legiſlative power, how formed in England, 61, & ſeq. Advantages ariſing from its being divided, 128, & ſeq. Remarkable conſtancy in its operations in England, 223. Not ſo in the ancient commonwealths, ibid. See *Parliament.*

Legiſlation, the buſineſs of, conducted in England upon quite different principles from what it is in the republican governments, 229. The manner in which laws are framed in commonwealths, 229, 230. Inconveniency of it, 231. The manner in which laws are framed in England, 232. Advantages of the ſame, 234—236. See *Propounding.* Would it be an advantage if laws were enacted by the people at large, 240, 246—256. See *People.*

Liberty, the word much miſapplied or miſunderſtood, 241, 244. A truer definition of the ſame, 245, 246. How the proviſions to ſecure it ſhould be directed, 279. Singular law doctrine in England concerning the liberty of the ſubject, 451—457.

Livy quoted, 253, 264, 329, 334, 346, 347, 348.

Lords, the houſe of, how conſtituted, 65. Not ſuffered by the commons to frame, or even alter a money-bill, 67. Make it a ſtanding order to reject all money-bills to which bills of another nature have been *tacked*, 77, 78, 396. Have not given up their claim in regard to altering money-bills, 86. The great pre-eminence allowed them in point of ceremony over the commons, 226, 227. Can vote by proxy, ibid. Unite in a common cauſe with the people againſt the power of the crown, 21, 22, 49, 50, 285—287, 363—370. Abridge their own perſonal privileges, 373. Their impartiality in their judicial capacity, 374, 375. Cannot be charged with having abuſed their privilege of trying their own members, 374, 375. Defeat the attempts of the commons on the crown's prerogative, 395—398. Their own attempts defeated by the commons, 397, 398. A bill is framed to limit their number, 398, 399. The great importance of that bill generally overlooked, 506, 507. See *Parliament* and *Peers*.

Lyttelton, lord, quoted, 315.

M.

Machiavel's hiſtory of the republic of Florence, quoted, 200.

Magna Charta, when and how obtained, 26, 27. An account of it, 27—29. Remarkable extenſiveneſs and impartiality of its proviſions, 338.

Marlborough, eaſily diſmiſſed from his employments, 214, 409, 410.

Martial, courts, a remarkable diſpute between one and a court of law, 464, 465.

Martial law, muſt be univerſal, where the authority of the government is ſupported by a ſtanding army, 447, 448.

Members of the houſe of commons, their perſonal privileges, 370. Inſtance of ſome puniſhed by their own houſe, 371, 372. See *Commons*.

Military power, a cauſe of anxiety to thoſe ſovereigns whoſe authority is ſupported by it, 446—448. Cannot in ſuch caſe be ſubjected to the civil power, 462, 463. Its needleſſneſs to ſupport the power of the crown in England, 390, 456—462. The ſurpriſing ſubjection of it to the civil power in England, 390, 462—467. See *Crown*.

Miniſter, equally intereſted with other ſubjects in maintaining the laws concerning perſonal ſecurity, 285. A diſ-

carded one in other countries, the caufe of fome anxiety or jealoufy to the government, 412. Not fo in England, 412, 440.

Monarchies, revolutions always concluded in them by provifions for the advantage of great men and leaders, not of the people, the fame as in commonwealths, 337, 402, 435—437. The executive power of the crown in all ancient or modern monarchies, wanting that peculiar ftability of the Englifh crown, 388. Numerous inftances of it, 388—391. Not fecured otherwife than by ftanding armies, ibid. The monarchs are afraid of powerful fubjects, 411, 412. Cannot do without fome arbitrary means of afferting their authority, 422. Very jealous of the liberty of the prefs, and perhaps are really obligated to be fo, 424, 425. Extremely averfe, out of fear for their own fecurity, to calling popular affemblies to take advice and affiftance from, 429—433. Refpect of perfons in the adminiftration of juftice cannot be prevented in them, 441, 442. Anxious precautions taken in them in regard to the military power, 446—448. Their law doctrine concerning the executive authority of the government, 451, 454. The military fuperior to the civil power, 462, 463.

Money Bills, not to be altered by the lords, 67, 86. Not to be tacked to other bills, 77, 78, 396. See *Taxation.*

Montefquieu, quoted, 293, 472.

More's Utopia, quoted, 293.

O.

Oftracifm, an arbitrary unjuft expedient, but perhaps neceffary in the republic of Athens, 422.

Oxenftiern, chancellor, his words to his fon, 527.

P.

Parliament, Englifh, the conftitution of, 61—70. How to be called, 63, 87. How bills are paffed, fee *Bill.* Proceedings in parliament not to be queftioned in any other place or court, 97. The fecret bent of that affembly to forbear invading the prerogative of the crown, 405—409. By the conftitution, force is removed from their debates, 449. Cautious conduct of the three branches, towards each other, 529, 531. See *Commons* and *Crown.*

Parliaments, French, what they are, 70. That of Paris, the motives of its firſt inſtitution, ibid. Is only an aſſembly of a judiciary nature, ibid. What kind of ſhare it claims in legiſlation, ibid. The great weight of that aſſembly, 163. Difficult to be managed by the crown, ibid. How the late king diſmiſſed it, 413, 414. Precautions taken by the preſent king in reſtoring it, 433. See *France*.

Parliamentary Hiſtory of England, a ſuperficial obſervation of its authors, 340.

Pardon, the prerogative of, lodged in the king, 72. Cannot be pleaded as a bar to an impeachment being carried on, 95. Doubtful whether it can ſtay the execution of a ſentence awarded in conſequence of an impeachment, ibid. Often granted on the recommendation of a jury, 186.

Peers, how to be tried, 179. Have few real perſonal privileges above the ſubject, 373. See *Lords*.

People, how miſled by favourites or demagogues, 198—200. How influenced or deceived by the magiſtrates, or great men in commonwealths, 250—257. Should act through repreſentatives, 246, 259. Should entirely delegate the legiſlative authority to theſe, 260—271. How and in what circumſtances only, the right of *reſiſtance* may be uſefully exerted by them, 320—324. See *Commonwealths*, and *England*. May be ſaid in England to poſſeſs both the judicial and cenſorial powers, 428, 429. The freedom they enjoy of interfering in government matters, 438—440.

Pope, Mr. quoted, 270.

Lex Porcia de tergo civium, 274, 348.

Præmunire, the different meanings of the word, 194.

Prætor, his office in Rome, 116. Aſſumes the office of a judge of equity, 139. His proviſions, 139—142. Their power very arbitrary, 147. When firſt reſtrained, 147—149.

Preſs, liberty of the, is a real cenſorial power lodged in the people, 291, 292. Much more effectual than the one eſtabliſhed in Rome, 293. And more uſeful by far to the community, 293, 294. How difficultly this liberty was gained at the expence of the executive power, 294, 295. A licenſer appointed upon the preſs by the ſtar-chamber, 295. By the long parliament, ibid. By Charles II. and James II. Finally eſtabliſhed in the year 1694, and how, 296. A definition of it, 296, 297. Actions reſpecting the ſame not to be decided without a

jury, 297, 298. How extenſive its uſe has become, 299, 300. Very great political advantages ariſing from the ſame, 301—305. Is farther uſeful, combined with the other rights of the people, 305—308. Such as the right of election, 308, 309. How uſeful a ſupport to the right of reſiſtance, 319, 320. Is not allowed in common-wealths, and why, 425, 426. Nor in monarchies, 424, 425. Its being tolerated in England to ſo high a degree, depends on the ſtability of the executive power of the crown, 427. By its means the cenſorial power may be ſaid to be lodged in the people, 428, 429. The real foundation on which it reſts in England, 452, 453. Error of the author, at firſt, in this reſpect, ibid.

Priſoner, how to be committed, 169, 170. When once acquitted, cannot be tried again for the ſame offence, 179. See *Trial.*

Privy council, its power abridged by the ſame act which aboliſhed the ſtar-chamber, 88. Its real office in the Engliſh government, 404. How formed, ibid.

Prorogation, its effects, 65. The term not to be afterwards ſhortened, 87.

Propounding, in legiſlation, the privilege of, reſerved to the executive power in commonwealths, 229—231. Allotted in the Engliſh conſtitution to the repreſentatives of the people, 232—236. How the ſame was formerly ſettled in France, Sweden, Scotland, and Ireland, 235. Great advantages accruing to public liberty from this right being lodged in the repreſentatives of the people, 232—240, 269—271. Its remarkable advantages for preſerving the Engliſh conſtitution, and inſtances of it, 482—486.

Puniſhments, the judge cannot alter the mode of, 182. Nor the ſheriff, ibid. Do not extend beyond the ſimple deprivation of life, 187. Their mildneſs in England, 381. Not ſo among the Greeks and Romans, 381, 382. Attention of the Engliſh legiſlature in that reſpect, 385, 386.

R.

Repreſentatives, qualifications for being one, 62. Advantages that accrue to the people from acting through repreſentatives, 256—258, 259. More hurtful than beneficial when their intereſt is not in reality united with that of the people, 259. The people ſhould entirely delegate the legiſlative authority to them, 261—267. The ſedate

manner in which in England they debate the ſubjects and vote, 268. Do not allow the ſpeaker to have a vote, 269. Nor the king's name to be introduced in debates, ibid. Are debarred from all executive authority, 280, 281. Capital advantages thence ariſing, 280, & ſeq. 287, 288. See *Commons* and *People*.

Reſiſtance, right of, admitted by the Engliſh laws, 314—316. Opinion of Judge Blackſtone quoted, 317. Recognized even by the courts of law, 318. Is in a great meaſure an uſeleſs right, unleſs combined with the liberty of the preſs, 319—320. What circumſtances are required for its being uſefully exerted, 320—324.

Revolutions have always been concluded in England in an advantageous manner to public liberty, 324. A ſeries of inſtances, 337—343. Not ſo in the Roman commonwealth, 325. A ſeries of inſtances during the whole time of its duration, 324—336. The ſame diſadvantage obtains in the Greek republics, 336. And in the limited monarchies of Europe, ſuch as Scotland, Sweden, &c. 337, 400—402, 435—437.

Revolution of the year 1689, how accompliſhed and improved, 59, 342, 343, 403. See *Revolutions*.

Re-unions of particular provinces to the crown, in France, 18, 19. The manner of theſe re-unions, and doctrine of the French lawyers in that reſpect, ibid.

Rome, wrong notions of liberty the patricians and ſenate give to the people, 241. The ſenate inveſts itſelf with the power of laying taxes, and on what occaſion, 253. The tribunes do not enact laws without the concurrence of the people, 261. The influence of ſenators and great men over the people, and their artifices, 262—265, 267. The people, and even the tribunes, greatly over-awed by a dictator, 261. The people betrayed by thoſe in whom they truſted, 272. The tribunes not earneſt in the defence of public liberty, 273. The ſenate, conſuls, and dictators, poſſeſſed of an arbitrary power over the lives of the citizens, 274. Aſſume occaſionally a power to take from the Capitol, and ſet aſide the laws enacted by the people, 275, 276. Who were called *nobiles*, 216, 278. The cenſorial power only a piece of ſenatorial craft, 293. Revolutions conſtantly concluded in a diſadvantageous manner to public liberty, 325. A ſeries of inſtances, 325—336. The laws concerning the liberty of the citizens were not ſtrictly executed, 344. A ſeries of in-

ſtances, 346, & ſeq. Remarkable inſtance of inſolence and cruelty of a magiſtrate, 349. The rapaciouſneſs of the men in power in regard to the allies and ſubjects of the republic, 350. Corruption of the judges, 351, 352. Remarkable changes of the formation of them, ibid. A remarkable paſſage of Tully in regard to the diſorders that took place in the republic, 354. A ſhort ſketch of their real cauſe, 355, 356. Dangers to which both its liberty and empire were expoſed, 474, 475. How the final overthrow of the republic was operated, 476, 477. The political rights allotted to the people, 479.

Rouſſeau, quoted, 225, 241, 261, 293, 484.

Ruſſian ambaſſador, the caſe of his arreſt, 380.

S.

Saxon government, aboliſhed in England by the Norman Conqueſt, 7. Paſſages of ſir William Temple and Spelman, on that ſubject, ibid. How far reſtored ſince the Conqueſt, 8, 9.

Scotland, the number of repreſentatives it ſends to parliament, 62. The lords of the articles, what aſſembly, 235. The authority of the crown commonly invaded by the nobles, 402. The bill that had been framed for ſettling the crown on the houſe of Hanover, 402, 403. No advantageous expedient to have truſted the nobility with the command of a ſtanding army, 449.

Secretary of ſtate, caſe of an action brought againſt one, by a private individual, 379.

Senate, Roman, how formed, 277. See *Rome*. Their conduct at the expulſion of the kings, 325, 326. See *Revolutions*. The great power they aſſumed over the lives of the citizens, 274, 347.

Sevigné, mad. de, quoted, 520, 521.

Smith, Dr. Adam, his opinion on liberty, and on the effects produced by a ſtanding army examined, 444—450. Farther obſervations on the ſame ſubject in general, 457—472.

Spain, how that monarchy was formed, 38. The expedient uſed by the preſent king for diſmiſſing the Jeſuits, 415, 416.

Spelman, quoted, 7.

Star Chamber, the court of, how conſtituted, 51. Suppreſſed the liberty of the preſs, 295. Expreſſions of ſir Edward Coke concerning it, ibid. Was a kind of a court of equity in regard to criminal matters, 455, 456. By what means aboliſhed, 485.

Statute de heretico comburendo, on what reaſon repealed, 384. That for allowing parliaments to meet of themſelves, repealed, 406.

Sweden, an account of the revolutions that have taken place in its government, and of the reſtraints at times put on the authority of the crown, 400, 401. The diſadvantages of the body of the people in the legiſlature, 480. An account of its government before the laſt revolution, 501—504.

Swift, dean, quoted, 410.

T.

Tacitus, quoted, 43, 537.

Taxation, right of, when firſt ſecured to the lords and commons, 35. Poſſeſſed in England by a ſingle parliament, not ſeveral aſſemblies, as in France, 44, 45. Is rendered thereby a much more efficacious check upon the crown, ibid. All taxes or money bills muſt originate in the houſe of commons, as well as the alterations in ſuch bills, 67. The great conſtitutional efficiency of that right, 74—84. The exiſtence of the commons wholly depends upon the ſame, 85. The advantages of this right of the commons, when combined with the right of propounding law remedies, 235, 236. How firmly it ſecures all the other rights of the people, and the whole conſtitution, againſt the attempts of the crown, 481, & ſeq. 487. Is the conſtitutional balance of the people againſt the crown, 513. At the ſame time the only forcible one, 514, 515, 527. Rendered ineffectual when lodged in ſeveral diſtinct provincial aſſemblies, 45, 517—520. How it might grow to be ſo divided in England, 522. The granting the Americans their claims would have altered the Engliſh conſtitution, 522—527.

Temple, ſir William, quoted, 7.

Torture, attempted to be introduced in the reign of Henry VI. by the dukes of Exeter and Suffolk, 181. Decided to be illegal by the judges, ibid.

Treaſon, high, ſtatutes concerning it repealed, 46, 82. How trials for caſes of treaſon are to be conducted, 174, 175.

Tribunes, betray the cauſe of the people, 272—275. The æra of their creation, 322. Their intereſted public conduct, 328—336. See *Rome*.

Trial, by jury, revived in the reign of Henry II, 25. How to be conducted, 171, & ſeq. Muſt be public, 182.

Great advantages of this institution, 183, 184. How strictly preserved in England, 357, 358. Not so in Normandy, Sweden, and Scotland, 358. See *Judicial Power*, and *Jury*.
Trials, the manner in which prisoners are tried in foreign countries, 166, 167.
Tucker, dean, 521.
Tudors, the great power of the princes of that house, 43, 45, 458. Were not assisted by any armed force, 390, 458.
Tully, quoted, 125, 142, 263, 266, 276, 349, 354, 537.

V.

Valstein, duke of, caused to be slain by the Emperor Ferdinand II. 411.
Verdict, how to be expressed, 176. A special one, what, ibid. A passage of Coke on the subject.

W.

William the Conqueror, sets aside the Saxon, and substitutes the feudal government, 7, & seq. Possessed of an uncommonly great authority, 14. What regulations he introduces into England, 13—15.
Writers, political, their ill-judged expressions and notions, 241—243. Their unwise admiration of the censorial power in Rome, 293. Have not penetrated into the real foundation of the science of politics, 473. Have treated it as an occult kind of science, as natural philosophy was, in the time of Aristotle, 497. Anecdote of one, 453.
Writs, their importance in the English courts of law, 127, 130—133. Compared to the Roman *Actiones legis*, 127. The difficulty in creating new writs, 132, 133.

FINIS.